SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No.

BESSIE MATHEWS AND LAVON KELLEY,
PETITIONERS,

vs.

STATE OF WEST VIRGINIA, EX REL. LORENTZ C. HAMILTON, PROSECUTING ATTORNEY OF CALHOUN COUNTY

ON PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF CALHOUN COUNTY OF THE STATE OF WEST VIRGINIA

INDEX.

	Original	Print
Record from Circuit Court of Calhoun County, West Virginia	1	1
Summons and return	1	1
Bill of complaint	3	2
Injunction	10	5
Demurrer	13	7
Motion to dismiss injunction	15	8
Minute entries of orders amending complaint, overruling demurrer and denying motion to dismiss injunction	17	9
Answer	19	10
Plaintiff's depositions	26	15
Deposition of I. H. Snyder	26	15
Louis Reed	33	23
Arlan G. Burns	40	31
Ivan Umstead	47	38
W. H. Francis	50	42
Nettie Stump	53	45
Dudley Lutz	55	48
F. F. McCoy	58	51

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 26, 1943.

—6339

	Original	Print
Record from Circuit Court of Calhoun County, West Virginia—Continued		
Defendant's depositions	61	54
Deposition of Mrs. W. J. Mathews	61	55
Bessie Mathews	64	57
Leone Metz	88	73
LaVaughn Kelly	93	76
Defendant's Exhibit No. 1—"Consolation" (omitted in printing)	102	
Defendant's Exhibit No. 2—"The Watchtower" (omited in printing)	103	
Defendant's Exhibit "Consolation" (omitted in printing)	104	
Defendant's Exhibit "Jehovah's Servants" defended (omitted in printing)	105	
Defendant's Exhibit "God and the State" (omitted in printing)	106	
Opinion, Miller, J.	107	82
Final decree	112	86
Clerk's certificate (omitted in printing)	114	
Proceedings in Supreme Court of Appeals of West Virginia	115	87
Order refusing appeal	115	87
Petition for appeal and supersedeas	116	88
Brief statement of the case	117	88
Demurrer	118	89
Motion to dissolve	119	89
Action of the Court	119	90
The facts as disclosed by the evidence	120	90
The Court's opinion	123	92
Assignment of errors	125	93
Order refusing second application for appeal	127	94
Order refusing third application for appeal	128	94
Order staying execution	129	95
Clerk's certificate (omitted in printing)	130	
Stipulation as to record	131	95
Order extending time to file certificate	132	96

[fol. 1]

IN CIRCUIT COURT OF CALHOUN COUNTY

Summons and Return

To the Sheriff of Calhoun County, Greeting:

We Command you that you summon Bessie Mathews and LaVon Kelley to appear before the Judge of our Circuit Court of Calhoun County at Rules to be held in the Clerk's office of said Court, on the first Monday in April next, to answer to bill in chancery exhibited against them in said Court by The State of West Virginia and have then there this writ.

Witness, P. P. Gunn, Clerk of the said Circuit Court, at the Court House of said county, on the 13th day of March 1942 and in the 79 year of the State.

(S.) P. P. Gunn, Clerk.

A Copy Teste: —— ——, Clerk.

[fol. 2] Calhoun County Circuit Court, April Rules, 1942

State of W. Va.

vs.

Bessie Mathews, La Von Kelley

Summons in Chancery

Executed within summons upon the within named Bessie Mathews and La Von Kelley on the 14 day of March 1942 by delivering to each of them in person a true copy thereof in Calhoun County.

Ivan Umstead, Sheriff of Calhoun County, W. Va.,
by Anas Sturm, Deputy.

[fol. 3] IN CIRCUIT COURT OF CALHOUN COUNTY

BILL OF COMPLAINT—Filed March 13, 1942

To the Honorable Lewis H. Miller, Judge of the Circuit Court of Calhoun County, West Virginia:

The Bill of Complaint of

THE STATE OF WEST VIRGINIA, Plaintiff,

against

BESSIE MATHEWS and LAVON KELLEY, Defendants

Filed in said Circuit Court

The plaintiff complains and says that the said defendants, Bessie Mathews and Lavon Kelley are members of and affiliated with an organization, which is called and known as "Jehovah's Witnesses, the members of which said organization are sometimes known and designated as "Jehovah's Witnesses", sometimes as "Russellites" and sometimes as "Witnesses".

The plaintiff further says that one of the creeds and tenets maintained and taught by said organization is that it is improper, wrongful and sinful to pay any respect or honor to the Flag of the United States, and especially that it is so improper, wrongful and sinful to pay that respect, honor and obeisance to such Flag, which is commonly known as the salute to the Flag, and that the said defendants maintain and hold to such tenets and creeds and profess to believe and say and claim that such respect and salute *and* should not be paid or given by themselves or by any other person.

The plaintiff further says that said organization publishes books, pamphlets, magazines and other papers and cause the same to be sold, distributed and circulated throughout the country, both in private homes and in public places, one of which is a newspaper or magazine, called the "Consolation".

[fol. 4] The plaintiff further complains and says that under the laws of the state of West Virginia it owns, operates and maintains two certain highways in the said county of Calhoun, one known as State Route No. 16 and the other as State Route No. 5, both of which extend through the town

of Grantsville, in said county, in part over William street, Main street and Court street, in said town, and that the said plaintiff also maintains and operates all the other streets and the alleys in said town of Grantsville.

The plaintiff further says that for several months last past the said defendants, Bessie Mathews and Lavon Kelley, have continuously and continually been selling, distributing and circulating the said books, pamphlets, magazines and papers, so published by said organization, teaching the said tenets and creeds of said organization and its said members, upon said highways, streets and alleys in said county and town, and especially at and near the corner of said William, Main and Court streets in said town, such corner being the principal corner and business place therein and being that part of the said town in which the traffic is most dense and the streets, alleys and sidewalks most crowded by public travel, and that the said defendants, themselves, have been orally teaching, preaching and maintaining upon such highways, streets and alleys, continuously and continually, for several months last past such tenets and creeds, and that they still are so selling, distributing and circulating such books, pamphlets, magazines and others papers and teaching, preaching and maintaining such tenets and creeds thereon: that, as a result of which said actions upon the part of the said defendants large crowds gather around the defendants in and at said public places and quarrel, dispute and argue with them concerning [fol. 5] such tenets and professed beliefs, so that said highways, streets and alleys are so crowded and jammed with people that the public traffic through and along the same is impeded and halted and the public does not have its proper and legal use of the same and the public and the citizens, generally, who are not interested in such quarrels and disputes are often unable to proceed along the said thoroughfares.

The plaintiff further says that practically all the persons, who so gather around the said defendants upon said highways and in said public places, are citizens living in said town and in the community surrounding the same, who do not believe in the said tenets, creeds and teachings of said defendants and their said literature and who believe that the same are wrong, unpatriotic and even treasonable, and that such selling and circulating of said books and papers

and such teaching of the matters therein contained by the said defendants constitute unpatriotic and treasonable acts: and the plaintiff says that in consequence of such beliefs of said people and of the said actions of the said defendants, there are constantly quarrels, cursing, brawling, threats against the persons of said defendants and other menaces and acts which constitute near riots upon said streets and in said public places: and that on the 7th day of March, 1942, by reason of said acts of the said defendants, brawls and fights occurred at the said corner of said William, Main and Court streets.

The plaintiff, upon information, further says that the said defendants say that they intend to continue the sale and distribution of said literature and the teaching and assertion of their said tenets and beliefs upon and in the [fol. 6] said public places in the said town and county.

The plaintiff further says that the acts, aforesaid, upon the part of the said defendants, as hereinbefore set forth, are and constitute a public nuisance, and that the same and the continuation thereof, as aforesaid, are and constitute an irreparable mischief and injury to the people of said town of Grantsville and of said county of Calhoun and that such injury and mischief are not adequately reparable in damages: and it further says that, unless the said acts upon the part of the said defendants in so selling and distributing said books, magazines and papers and in so publically teaching and maintaining their said tenets in and upon said public places in said town and said county are discontinued and stopped by them, or they are injoined and prohibited from the commission of the same, the excitement, quarrels, brawls and riots, thereby occasioned, will continue and grow worse in character, until grave and serious offenses will result, and the rights, morals, privileges, persons, security and morale of the public will be greatly affected, injured and damaged, and the peace, unity and security of the town and county and the public generally be disturbed, and the ability of the people and said public to aid the government in the present emergency be greatly impaired and lessened: and that, unless said acts, so done and performed by the said defendants, are restrained, prohibited and injoined by an order of the Court, as hereinafter prayed, and said nuisance thereby abated, great harm and injury will result to the people and the state: and the plaintiff says that the condition of the people of the town and county and the public

generally in the state will be bettered and advanced and [fols. 7-9] the *the* commission of illegal acts will be lessened and abated, if the injunction, hereinafter prayed for, be granted.

The plaintiff further says that there are no criminal statutes of the state of West Virginia and no criminal ordinances of said town of Grantsville which will prohibit the acts, aforesaid, so done by the said defendants, and the plaintiff does not allege that the said defendants have been guilty of any crime against the state or town, or that said acts are crimes per se.

Being without relief in the Courts of the common law, the plaintiff therefore prays of this honorable court of equity that the said defendants be restrained, injoined and inhibited from selling, distributing and circulating, said books, pamphlets, magazines and papers in or upon any of the public places in the said county of Calhoun and from orally teaching, preaching and maintaining said tenets and creeds and professed beliefs in or upon said public places: and that the plaintiff may have all such other and further relief as the nature of its cause may require and the Court will see fit to grant.

The State of West Virginia, plaintiff, by Counsel ——. (S.) Lorentz C. Hamilton, Attorney for the plaintiff.

Duly sworn to by A. G. Burns. Jurat omitted in printing.

[fol. 10] In Circuit Court Of Calhoun County

State of West Virginia, Plaintiff,

against

Bessie Mathews and Lavon Kelley, Defendants

In Chancery

Injunction—March 13, 1942

This day the plaintiff, by its attorney, presented its bill of complaint, duly verified, to the undersigned Judge of the Circuit Court of Ritchie county, West Virginia, in the vacation of said Court and in the vacation of the Circuit Court of Calhoun County, West Virginia, praying for an

injunction against the said defendants, restraining, enjoining and inhibiting them from selling, distributing, in and upon the public places of said county of Calhoun, any of the books, pamp-lets, magazines or other papers, including a paper called the "Consolation", published or caused to be published by an organization known as "Jehovah's Witnesses", which teach or maintain that it is improper, wrongful or sinful to pay respect, honor or obeisance to the Flag of the United States and to perform the ceremony in honor of said Flag and the nation, which is commonly known as the "Salute to the Flag", and from selling, distributing or circulating any other books, pamphlets, magazines or papers teaching and maintaining such tenets, in said public places; and from orally teaching, preaching or maintaining such or creeds in or upon such public places in said county of Calhoun.

Upon consideration whereof, the undersigned Judge, being of the opinion to award said injunction, as prayed for, it is ordered that until the further order of the Circuit Court of said county of Calhoun, the said defendants, Bessie Mathews and Lavon Kelley, be and they are hereby restrained, enjoined and inhibited from selling, distributing and circulating said books, pamphlets, magazines and other papers in and upon said public places and from so orally teaching, preaching and maintaining said tenets and creeds, hereinbefore described and set forth in and upon said public [fol. 11] places in said county.

It is further ordered that the Clerk of said Court make certified copies of this order and deliver the same to the Sheriff of said county, who shall serve the same upon each of the defendants, which shall be a sufficient notice of this injunction, which injunction shall be effective as to each one of the defendants as she has such notice of the same.

And it appearing to the Court that bond is not required by law to be given in such cases, no bond is required herein.

S. V. Prunty, Judge of the Circuit Court of Ritchie County.

To P. P. Gunn, Clerk of the Circuit Court of Calhoun county, West Virginia:

You will enter the foregoing as a vacation order, as of the 13th day of March, 1942.

S. V. Prunty, Judge.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 12] Executed the within notice upon the within named Bessie Mathews and LaVon Kelley on the 14 day of March 1942 by delivering to each of them in person a true copy thereof in Calhoun County.

Ivan Umstead, Sheriff of Calhoun County, West Virginia, by (S.) Amas Sturm, Deputy.

[fol. 13] In the Circuit Court of Calhoun County

[Title omitted]

Demurrer

The defendants say the Bill of Complaint heretofore filed against them herein is not sufficient in law for the following reasons:

1. No statements made by these defendants or set forth in the publications distributed by them are stated or quoted in the Bill of Complaint, but only opinions or conclusions of the plaintiff's relator, and which are entirely inaccurate and erroneous. These defendants cannot be held to answer the opinions or conclusions of the plaintiff, but only the statements actually made by them.

2. That these defendants are not charged with violating any law, but on the contrary the Bill of Complaint expressly alleges that they have not violated any law, and these defendants are not responsible for unlawful acts which others or the general public may be guilty of.

[fol. 14] 3. That Equity is not availing where other remedies will suffice, and obstructing traffic and fights and brawls in the public streets can easily be stopped by arrests, when necessary. Sedition is likewise punishable under the criminal law.

4. Distributing literature is guaranteed by both the federal and state constitutions under freedom of speech and freedom of the press. 303 U. S. 444, 308 U. S. 147.

5. The fact that violence is threatened against distributor is no ground for stopping Jehovah's Witnesses, who rightly resist actual violence. 247 U. S. 357.

6. Refusal to salute the flag is not ground for interfering with Jehovah's Witnesses. 116 S. W. 2nd. 836. 28 N. Y. 2nd 92. 20 A 2nd 185.

7. If anyone other than defendants violates the law it is the duty of the authorities to arrest the guilty ones and if it become necessary to call out the national guard or army to do so. Certainly neither of these would be necessary to arrest the defendants.

(S.) Horace S. Meldahl, Counsel for Defendants.

[fol. 15] In the Circuit Court of Calhoun County

[Title omitted]

Motion to Dismiss Injunction

To the Honorable Lewis H. Miller, Judge of Said Court:

The undersigned hereby move the court to dismiss the injunction heretofore awarded in vacation by the Hon. S. O. Prunty, Judge of the Circuit Court of Ritchie County, as having been improvidently awarded, on the following grounds:

1. That the plaintiff's relator is not named.

2. That no notice of the application was given.

3. That no bond was required.

4. That the bill of complaint and affidavit do not expressly and specifically charge any unlawful or improper statements made by the defendants, or in the literature being distributed by them, or any unlawful or improper acts on their part, but only the unnamed relator's opinion or conclusion regarding them.

[fol. 16] 5. That any improper obstruction of the traffic, committing of nuisances, acts of sabotage or treason, or the starting of fights, brawls, or threats would be punishable under the criminal law, and no injunction would be necessary to abate or stop same.

6. That said bill of complaint expressly avers that the defendants have committed no crime and violated no law.

7. That these defendants are not responsible for any violations on the part of other people.

8. That they were entitled to distribute literature and to teach the scriptures as they were doing under both the federal and state constitutional guarantees of religious freedom, freedom of the press, and personal liberty.

9. That if anyone interfered with their so doing, or involved them in brawls or attacks it was the duty of the authorities under the criminal laws to arrest those attacking and molesting these defendants, and by so doing to prevent the wrongful acts set forth in the bill of complaint.

(S.) Horace S. Meldahl, Counsel for Defendants.

[fol. 17] In Circuit Court of Calhoun County

[Title omitted]

Minute Entries of Orders Amending Complaint Overruling Demurrer, and Denying Motion to Dismiss Injunction—April 22, 1942

The plaintiff this day appeared, by its attorney, and asked leave of the Court to amend its bill by inserting therein the following allegations, to-wit:

By inserting therein on page five immediately before the prayer of said bill the following allegation, to-wit:

"The plaintiff further alleges that this suit is brought by and with the consent and at the direction of the Honorable Clarence W. Meadows, the Attorney General of the state of West Virginia, and is brought at the relation of Lorentz C. Hamilton, the Prosecuting Attorney of said county of Calhoun".

And by inserting therein on said page five immediately before the words "Lorentz C. Hamilton" and immediately prior to the words "Attorney for the plaintiff" the following, to-wit:

"Prosecuting Attorney of Calhoun county, West Virginia and".

And thereupon, on motion of the plaintiff, such leave to so amend the said bill is granted and the bill is ordered to be and is amended accordingly.

And thereupon, the said defendants appeared, by their attorney, Horace S. Meldahl, and filed their written demurrer to the plaintiff's bill, in which demurrer the plaintiff joins, and the matters of law arising upon such demurrer being argued by the attorneys for the plaintiff and the defendants, it is ordered that said demurrer be and the same is hereby over-ruled and dis-allowed.

And thereupon, the said defendants, by their said attorney, appeared and moved the Court to dismiss the temporary injunction, heretofore awarded herein by the Honorable S. O. Prunty, Judge of the Circuit Court of Ritchie [fol. 18] county, West Virginia, as having been improvidently awarded, the reasons and grounds being assigned in writing, duly filed by the said defendants and made a part of the record herein: and the matters, arising upon said motion having been argued by the attorneys for the plaintiff and the said defendants, the Court is of the opinion to and doth hereby overrule said motion to dismiss said temporary injunction.

[File endorsement omitted]

[fol. 19] In the Circuit Court of Calhoun County

[Title omitted]

Answer

To The Honorable Lewis H. Miller, Judge of Said Court:

Now come the defendants, Bessie Mathews and LaVaughn Kelley, and for answer to the Bill of Complaint heretofore filed against them by the State of West Virginia, or to so much thereof as they are advised it is or may be material to answer, answering say:

1. That it is true, as alleged in said Bill of Complaint, in the first paragraph thereof, that they are witnesses for Jehovah, Almighty God, testifying in His behalf by their words and deeds in accordance with His commandments

and in accordance with Holy Scripture commonly called the Holy Bible, but they deny that they are Russellites, or properly referred to as such.

[fol. 20] 2. These defendants emphatically deny that any of their creeds or tenets, maintained or taught by them, or either of them, is that it is improper, wrongful or sinful to pay any respect or honor to the Flag of the United States, and they allege that they do love, honor and respect the flag of the United States, and do love the United States and its people, and they aver that they try to the very limit of their ability to promote the welfare of the people of the United States of America both temporally and spiritually, and that they support and uphold the Constitution and all valid laws of said United States of America, and all political subdivisions thereof, and that they conform also to God's laws set forth in the Holy Bible.

3. Those defendants say that they do try to teach God's laws set forth in Holy Scriptures as did Jesus Christ, and as God has commanded all His children to do; that they observe the Ten Commandments of God, including the first and second, which are as follows:

"I am JEHOVAH thy God • • • Thou shalt have no other gods before me. Thou shalt not make unto thee any graven image, or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth: thou shalt not bow down thyself to them, nor serve them: for I JEHOVAH thy God am a jealous God, visiting the iniquity of the fathers upon the children of them that hate me; and showing mercy unto thousands of them that love me, and keep my commandments." Exodus 20:2-6.

4. These defendants acknowledge that they believe the foregoing commandment of Jehovah is applicable to saluting the flag, because doing so, they conscientiously believe is making obeisance to an image contrary to God's said commands, and that they have expressed such belief before others, assuming that others likewise would want to obey God, and that no person familiar with God's command would be willing to violate them and thereby deprive themselves of salvation or want other people to do so.

[fol. 21] These defendants say that there is no governmental law which requires a person to salute the flag, or

which prohibits a person from calling attention to God's said commandments, and no law forbids encouraging other people to obey God's law; that no person has the right to require that another person violate God's law.

5. These defendants say that no disloyalty to our country or disrespect to its flag is intended in declining to salute the flag in obedience to God.

6. These defendants further say that Jehovah's Witnesses do not publish books, pamphlets, magazines or other papers, and that the Consolation and Watchtower are published by the Watchtower Bible and Tract Society, Inc. That all of said publications have been duly investigated by the United States Postal Authorities as well as other agencies of the government and found to be perfectly proper, loyal, patriotic and suitable publications for distribution through the mails and to be read by people of the United States of America.

7. That nothing sedicious, traitorous or improper is ever published in any of them, that they do nothing to lessen anyone's patriotism, or loyalty to the welfare of the people of the United States, but on the contrary they do do everything they can to promote such welfare to the fullest possible extent.

8. These defendants say that if any other people stop and congregate unlawfully upon the streets of the said town of Grantsville for any purpose it is the privilege and duty of the public authorities to prevent their doing so. These defendants say they have never violated any law or done anything improper in offering for sale or distributing the publications handled by them, either upon the streets or highways or in any other place in the town of Grantsville or [fol. 22] Calhoun County; that all their acts are and have been lawful and proper and protected by state and national constitutional guarantees of freedom of religion, freedom of the press, personal freedom and liberty under the First and Fourteenth Amendments of the U. S. Constitution, and Article III. Section 15, of the Constitution of the State of West Virginia.

9. These defendants say that they have never been guilty of any arguments, quarrels or fights, and that any explanations of scriptures which they may have made have been

strictly in accordance with the Holy Bible; that they have never been guilty of any unpatriotic, treasonable or unlawful acts, or violated any law, and that they have not committed any nuisance, interfered with traffic, or otherwise wronged any person.

10. These defendants say they have not taught and do not teach the tenets and creeds of any organization, but merely the statements made and set forth in the Holy Bible, and that the books and pamphlets they sell or distribute do nothing other than teach and explain the Holy Bible.

11. These defendants say they did not write the Bible and are not responsible for what it says, nor are they accountable for what God has done or may do. They believe, however, that to achieve salvation they must do what God requires of them, as commanded in the Holy Bible, and that every other person who wishes to gain salvation must do so likewise. These defendants believe there is nothing wrong in doing what God requires of them in His Holy Word, but that it is wrong not to do so, and that they must obey God at all costs, even if it means great sacrifice and even death in this world.

12. These defendants say that they have not caused any brawls or fights, or impeded traffic on any street in said town of Grantsville, either on March 7th, 1942, or at any other time, and that they are not responsible for what others may have done, or for the failure of public officers to deal [fol. 23] with any law violators according to law.

13. These defendants say it will not constitute an irreparable injury or mischief to the town of Grantsville to teach the Holy Scriptures therein, but that it may result in the salvation of some of the sinners and wrong doers therein to teach them the Holy Scriptures, and persuade them to obey God's laws and commandments, and to observe the laws of the United States and its political subdivisions, and to uphold law and order and practice decency in said town and county; that it is to the public interest for these defendants and their associates to continue to teach the Holy Scriptures by word and example, and to strive for the uplift and general well being of the people of Calhoun County and the town of Grantsville.

14. These defendants say that if any other people are guilty of fights and brawls on the streets of Grantsville, or unlawfully obstruct traffic thereon, it is not only proper but the duty of the municipal authorities to arrest them, and to see that they are punished according to law, and that any nuisances committed by them are promptly abated, and these defendants emphatically aver that no injunction against them is necessary to permit such authorities and public officers to perform such lawful duties; that these defendants have never in any way interfered with them in the exercise of their said authority or duties, but on the other hand these defendants call upon said officers and authorities to do and perform their duties, and to administer the law fully and faithfully, and in a lawful manner.

15. These defendants say that they are entitled to the protection of the law against those who would violate it by unlawfully mistreating them, and that it is the duty of the [fols. 24-25] said town authorities and officials to see that these defendants are unmolested in the exercise of their rights, and the carrying on of their lawful work and activities, and that those who violate the law and do violence toward them, or otherwise violate the law, are restrained and punished as their misdeeds may require.

These Defendants Accordingly Pray that the temporary injunction heretofore awarded without notice and without bond, restraining and inhibiting them from carrying on their lawful rights and privileges, may be dismissed as improvidently awarded, that the plaintiff be required to furnish bond, that this proceeding against them may be dismissed, that they may be awarded their costs in this behalf expended, including an attorney's fee, and that they may be given such other and further relief as to equity and this Honorable Court may seem meet, and as in duty bound, will ever pray, etc.

(s) Bessie Mathews, La Vaughn Kelley.

(s) Horace S. Meldahl, Counsel for Defendants.

Duly sworn to by Bessie Mathews and La Vaughn Kelley. Jurat omitted in printing.

[fol. 26] IN CIRCUIT COURT OF CALHOUN COUNTY

PLAINTIFF'S DEPOSITION

Depositions of witnesses taken at the law offices of Lorentz C. Hamilton in the Town of Grantsville, County of Calhoun, State of West Virginia, on the 14th day of August, 1942, to be read in evidence in behalf of the plaintiff in a certain suit in chancery pending in the Circuit Court of the said County of Calhoun, wherein the State of West Virginia at the relation of Lorentz C. Hamilton, Prosecuting Attorney of said Calhoun County, is plaintiff, and Bessie Mathews and Lavon Kelley are defendants.

Present the plaintiff by Lorentz C. Hamilton, its attorney, and the defendants by Horace S. Meldahl, their attorney, and defendant Bessie Mathews, in person.

I. H. Snyder, a witness, was first introcuced on behalf of plaintiff, after being duly sworn, deposes and says:

Mr. Hamilton—Direct Examination.

Q. Where do you live, Mr. Snyder?

A. Grantsville.

Q. By whom are you employed?

A. Hope Natural Gas Company.

Q. Are you acquainted with the defendants, Bessie Mathews and Lavon Kelley?

A. Yes, sir.

Q. State what, if anything, you know of the said defendants distributing or selling books or pamphlets on the streets of Grantsville from along in October, 1941 to March 7, 1942.

A. Well, I have seen them on the street practically every Saturday and it was causing quite a bit of comment and confusion in the town.

Q. In what parts of the town did they sell this literature?

A. You mean where they were posted?

Q. Yes, sir.

A. On Main Street.

Q. Where on Main Street, with reference to any particular building or buildings?

A. Part of the time in front of the second-hand furniture store and part of the time in front of Mathew's Clothing Store, and part of the time on the corner.

[fol. 27] Q. Tell the court what crowds, if any, gathered around them.

A. At times there were considerable crowds, always more or less spectators and commenters.

Q. Up until and before March 7, what would you say would be the size of those crowds? How many people?

A. Oh, I never stopped to count them, but it would be an unusual crowd for people to see who would be passing by or passing through.

Q. What would you say as to what, before March 7, the size of these crowds would have to do with interfering with traffic either on the sidewalks or street itself?

A. It would obstruct traffic, especially on the sidewalks, and one would sometimes have to step out on the street in order to get by.

Q. Now coming down to the 7th day of March, 1942, which I believe was the Saturday which was the day, according to the record book, when considerable trouble occurred; state what you saw and observed that day, if anything. Where were you that day in the afternoon?

A. I started to Barr's Store after an article and Mrs. Mathews was there selling some literature. I passed her and came to the post office and stopped there and wondered why we didn't put a stop to it, and I, as a citizen, would put a stop to it. About that time Mr. Shaffer came by and they had an argument about selling the literature and I think probably he jerked it out of her hand.

Q. What happened then?

A. Mr. Shaffer came down and wanted to know as an organization why the Legion didn't do something about this, and I explained to him they was a patriotic and civic organization and we had no part in taking part in an argument of this kind. He said something should be done about it.

Q. Tell what he meant by that.

Objection by Mr. Meldahl.

Q. The question is Mr. Snyder, you said that Mr. Shaffer wanted to know why something wasn't done about this or it. What did he mean by this or it?

A. This literature to be sold on the street.

Q. What happened after that?

A. I told him that as a civic or patriotic organization we would try if there was any way around in a civil way to put a stop to it.

Q. Tell what you did following that.

A. Following that, I took Mr. Shaffer before the mayor of Grantsville to see if there was any way that we could temporarily put a stop to it and *disburse* with the audience *of* crowd that was gathered around there.

[fol. 28] Q. You needn't tell the talk you had there in the absence of the defendants, but after that what did you see?

A. Fighting.

Q. Who was fighting?

A. Mrs. Mathew's son, whose name is William, and Mr. Shaffer.

Q. What led up to that trouble?

A. The encounter that Mrs. Mathews and Mr. Shaffer had on the street.

Q. Just tell what you saw at that time.

A. By that time there was 150 or 200 people gathered around. We got them separated and Mr. Shaffer promised that he would go home then.

Q. What would you say as to the amount of street and sidewalks the crowd covered that day of March 7?

A. About two-thirds of the center block.

Q. Would you say that it entered Main or William Street?

A. Both of them. I expect there was 150 or 200 people gathered around.

Q. What would you say as to whether or not this proceeding interfered with traffic on sidewalks or streets?

A. You couldn't get across the sidewalk unless you jammed or crowded your way.

Q. What about Main and Court Street? Could cars pass through?

A. Not on a routine of traffic you couldn't.

Q. Would you say cars were held up on account of the jam?

A. There would be a question there.

Q. Were cars actually held up?

A. They were stopped any way.

Q. Did you hear any comment or talk by the people composing the crowd?

Objection by Mr. Meldahl.

A. Any comments or objections by people composing the crowds?

Q. If there was any objection say what it was.

Objection by Mr. Meldahl.

A. There was considerable comment.

Q. Just tell what it was.

[fol. 29] A. It was practically in every particular against the selling of this literature.

Q. Did you hear any threats made?

A. As to threats, any more than that they should be put out some way.

Q. Would you say any threats were made against the defendants because of their selling this literature?

A. Well, there was a number said they should be put off the street. I don't know if that is a threat or not.

Q. Was anything said about doing either of them any bodily harm?

A. Well, there was a lot of them said they should be tarred and feathered and put out of town.

Q. Was anything said about these meetings or if these meetings were continued what would be the result?

A. They said if this went on they was afraid somebody would get hurt.

Q. Whom did they mean by somebody?

A. They would probably mean innocent bystanders as well as anybody else.

Q. Would they mean the defendants?

A. They probably meant the defendants as well as somebody else.

Objection by Mr. Meldahl.

Q. State from that you heard from what you know about what you testified if these meetings on the streets of Grantsville were continued, taking into consideration the emergency which the country is now confronted with, would or would not bodily harm to the defendants happen?

Objection by Mr. Meldahl.

A. Would you mind to state that question again?

Question was repeated by stenographer.

A. I would say yes on that, if I understand the question rightly.

Q. State whether or not in your opinion these meetings held by the defendants on the streets of Grantsville constitute a public nuisance?

Objection by Mr. Meldahl.

A. If they were a public nuisance?

Q. Yes.
A. Yes.

Mr. Meldahl:

Q. Mr. Snyder, will you produce in your evidence any [fol. 30] literature distributed by Jehovah's Witnesses that you have ever read that you consider improper in any way.
A. I don't keep this literature.
Q. You have no literature that you are willing to introduce here that you would consider improper.
A. No.
Q. Do you have any any place?
A. No. I have had, and burned it up.
Q. Will you tell that court what that literature said that you say was improper and tell where such statements can be found.
A. You will find it in one of their pamphlets where they say it is against a conscience to pay a tribute by saluting to the American flag.
Q. Tell the court where you will find a pamphlet that says anything to that effect. I call upon you to produce it.
A. Give me time.
Q. I give you any time you want, and when you obtain it turn it over to the stenographer. Now what statements did you ever hear Mrs. Mathews or Miss Kelley say that were improper?
Objection by Mr. Hamilton.
A. I never had a conversation with them about their religion.
Q. Well now on the 7th day of March you say that was the principal occasion when there was some difficulty here.
A. Yes, sir.
Q. On what other date or occasion did anything happen of any consequence?
A. Nothing of consequence especially except people gathered around and commented on what they were doing.
Q. Is it against the law for people to comment in Grantsville?

Objection by Mr. Hamilton.

Q. You testified that on March 7 when this man Shaffer came down and demanded that these people be taken off the street and this altercation occurred that 150 or 200

people gathered around, and then you subsequently state that 200 or 250 gathered around. Now do you change your opinion about the number of people in a minute or two?

A. I think you misunderstood my answer.

Q. The stenographer can read your answer back to you if there was any doubt as to what you said.

[fol. 31] Q. Now you say that these threats that various people made toward the defendants here were to the effect that they should be tarred and feathered and put out of town, and things like that?

A. Yes, sir.

Q. Is that a lawful procedure for people here?

A. I wouldn't say it was.

Q. In other words, you say that a lot of other people were threatening to violate the law here?

A. I am not to pass on that law.

Q. And your contention is that because some other people were threatening to violate the law against these people that other people were justified in talking about violating the law?

Objection by Mr. Hamilton.

A. I wouldn't be a judge on that question.

Q. Now did you hear anyone say that Mrs. Mathews or Miss Kelley would attempt to hurt anybody?

A. I never heard anybody say that they attempted to hurt anybody.

Q. How many police officers does Grantsville have?

A. Two.

Q. Did you notice any of them attempting to disburse the crowd that gathered on this occasion?

A. No, I don't believe I ever did.

Q. Did you see them make any arrests?

A. No, sir.

Q. Did the crowd show any resistance to public officers doing their duty?

A. No, sir.

Q. Do you know any reason why the public here in Grantsville isn't obedient to law and order.

A. They are.

Q. They are obedient and if the authorities had ordered the crowd to disburse they would have done so?

A. I am going to leave that as a question on that particular occasion.

Q. Now you say some cars stopped on the street at that time, but not that the street was impassable?

A. No, I didn't say the street was impassable.

[fol. 32] Q. Now the people that stopped in these cars; didn't they stop for the same reason that people who were not in cars, just to see the excitement?

A. Yes, I presume that was it.

Q. Now Mr. Shaffer on that occasion had been drinking?

A. I never seen him take a drink.

Q. But you say by his conduct that he was under the influence of liquor?

A. That I couldn't say.

Q. Did you observe anything to warrant his going up to Mrs. Mathews and jerking the literature out of her hands?

A. That was when I first seen him, when he jerked the literature out of her hand, and what happened before I don't know.

Q. Do you know what happened just before he and Mr. Mathews were involved in an altercation there?

A. No, I do not. I don't know what provoked that situation, but I guess it was because of the trouble his mother had.

Redirect.

Mr. Hamilton:

Q. Reference has been made on your cross-examination to the lack of police interference with the regulation of the crowd. State whether or not, in your opinion, police interference or attempted regulation would have provoked more trouble and brawls?

Objection by Mr. Meldahl.

A. If you want an objection, police interference causes more trouble. I would say police didn't interfere, and this is just an opinion.

Q. The bitterness of the crowd or crowds toward the defendants about which you have testified came from what teaching or preaching by the defendants, who are admitted members of the sect called Jehovah's Witnesses?

Objection by Mr. Meldahl.

A. The attitude of the people, as stated in the cross-examination, was the failure to pay a tribute of respect to the flag.

Q. You mean by that the belief or teaching of the followers of this sect that it is improper or wrong to render the salute usually known as the salute to the flag?

A. They claim that is wrong. It is against the conscience.

Q. My question is, is it that particular belief or teaching of the sect that caused the feeling of bitterness toward the defendants?

A. Yes.

Mr. Meldahl:

Q. Mr. Snyder, do you know whether or not Jehovah's [fol. 33] Witnesses will and do make this pledge: "I respect the flag of the United States and acknowledge it as a symbol of freedom and justice to all. I have pledged my unqualified allegiance and devotion to Jehovah, the almighty God, and to his kingdom for which Jesus commands all Christians to pray. I pledge allegiance and obedience to all the laws of the United States which are consistent with God's law, as set forth in the Holy Bible."

A. No, I didn't know that. I never seen one of them take it.

Q. Do you know anything wrong with that pledge.

Objection by Mr. Hamilton.

A. I have no comment to make on it.

Q. Do you think it is right to condemn people without knowing just what their position is?

Objection by Mr. Hamilton.

A. In all the literature I have ever read that pledge was never in it.

Q. You have read lots of newspapers and other publications where that pledge was not in them?

A. I have.

Q. You would not say those other things were wrong just because you did not read this pledge in them?

A. No.

Q. You haven't read all the literature of Jehovah's Witnesses, have you?

A. I don't presume I have.

Q. Well, you do not undertake to state that the pledge is not in the literature?

A. It has never been in any that I read.

LOUIS REED, being a witness of lawful age, was next introduced on behalf of the plaintiff, and after being duly sworn deposes as follows:

Mr. Hamilton:

Q. Your name is Louis Reed?
A. That is right.
Q. Where do you reside?
A. Grantsville, West Virginia.
Q. What is your profession?
A. Attorney at law.
Q. You practice law at Grantsville?
[fol. 34] A. Yes, sir.
Q. State in what building your law office is located.
A. In the Bank of Grantsville building.
Q. State whether or not that building gives a clear view of Main Street from the Bank of Grantsville building to the corner of Court and Main Street.
A. It does.
Q. It has been testified in this case by one of the defendants that she is a member of the religious sect known as Jehovah's Witnesses, and that she sold or distributed literature of that sect on Saturday afternoons from some time in October, 1941, to March 7, 1942. State whether or not you have observed from your office on Saturday afternoons within the period I named the defendants, or either of them, distributing such literature on Main Street?
A. I do not recall that I ever observed that from my office. I have, however, observed both of the defendants on the street distributing some kind of literature, and have been accosted by the defendant Kelley to purchase a pamphlet or book, the name of which I understood to be "Consolation."
Q. State whether or not you have observed any crowds gathered around the defendants while they were distributing this literature.
A. On one occasion I saw a sizable crowd gathered about the front of Mrs. Mathews or in her vicinity.
Q. On what part of Main Street did that happen?
A. That crowd gathered in front of the W. J. Mathew's store on the corner of Williams and Court Streets.
Q. What would you say as to the size of that crowd?
A. Of course, I would have to estimate it. I should estimate it as at least 150 persons. I consider that a low estimate.

Q. Can you recall the date you saw this crowd?

A. I can only connect it with the time when Carter Shaffer accosted Mrs. Mathews on the street, which I believe was some time in March of this year.

Q. What can you say as to whether or not this crowd crowded the sidewalks along Main Street?

A. The sidewalk was obstructed by the crowd.

Q. What can you say as to how far out into Main or Williams Street the crowd extended?

A. I was standing in the middle of Williams Street, and the crowd extended beyond me on the other side.

Q. Would it be too much to say that it extended across to the other sidewalk?

A. I should want to qualify my answer there by saying that there was a great deal of movement in the crowd. [fol. 35] There were persons behind me I feel sure who at times comprised a group extending to the other side of the street.

Q. State, Mr. Reed, what, if anything, in the nature of a brawl or fight or other trouble that you observed that day.

A. I was proceeding from the Calhoun County Bank to the Thompson Drug Store when I passed W. J. Mathew's Store and observed Mrs. Mathews standing near the curb of the sidewalk. I started on across the street obliquely toward the drug store when I was accosted by Mr. Charter Shaffer who demanded that I do something about Mrs. Mathews. Mr. Shaffer seemed to think that because I was a lawyer I had some kind of special authority in the matter. I told Mr. Shaffer that I knew of nothing I could legally do. Mr. Shaffer left me and started back toward Mrs. Mathews at the corner. As he did so I observed that people began to crowd forward. I was too far away to hear what, if anything, Mr. Shaffer said to Mrs. Mathews. I saw Mr. Shaffer lay hold of some literature that Mrs. Mathews held in her arms. At that point my view was obstructed by other persons rushing in between me and what was going on at the corner, and the next thing I saw was that Mr. Shaffer and young Bill Mathews, as we call him here, fighting. I did not go any closer than my position in the middle of the street, but I did see that Bill Mathews had Mr. Shaffer down in the street. After a while they were either parted or quit fighting and I went on to the drug store. That is all.

Q. You have stated that the crowd gathered around Mrs.

Mathews, obstructing the sidewalk along in front of the W. J. Mathews' Store. What can you say as to any obstruction caused to Main Street itself by the crowd.

A. I believe it was obstructed.

Q. Could automobiles travel freely along Main Street?

A. No.

Q. Mr. Reed, state whether or not you heard any threats or other indications of ill feeling by the crowd or members of the crowd against the defendants, or either of them.

A. I can't say that I did. You say threats?

Q. I say threats or evidences of ill feeling.

A. Let me qualify that answer then that persons near me, and one man in particular, I know his face but I don't know his name, made remarks like this: "She had it coming to her," and "If this isn't broken up somebody will be killed." I didn't hear any threats other than comments of that kind among the crowd.

Q. State what, if you know or understood at the time, the man meant by this "being broken up."

A. He meant the distribution of literature which he believed, rightly or wrongly, showed disrespect to the flag.

Q. And can you say what particular teaching he believed did constitute disrespect for the flag?

A. It is widely believed, either correct or not, that the sect known as Jehovah's Witnesses, refuses to salute the [fol. 36] flag, and the wide-spread belief that they refuse to salute the flag is the cause of a great deal of ill feeling against the sect.

Q. State whether or not, in your opinion, these gatherings had by the defendants in public places and the distribution of literature by them upon the streets of the town constitute a nuisance.

Objection to opinion by Mr. Meldahl.

A. It constitutes a nuisance now, is the way you asked it. Of course, there is a legal definition of a nuisance and I would have to answer that question that I do not know. I will leave it that way.

Q. State whether or not, in your opinion, if the temporary injunction of this suit were dissolved and the defendants or other people believing in the tenets supposed to be held by the defendants continued their gatherings in public places and distributing such literature, would there be

danger that the defendants, or other persons so acting, might be caused bodily harm, taking into consideration the state of feeling that the country is now in by reason of the war and emergency?

Objection to the question by Mr. Meldahl.

A. Definitely, yes.

Q. In your opinion, if the defendants continued to distribute the literature in public places could the ordinary police powers of the town or of the county or state prevent the defendants from the possibility of harm.

Objection by Mr. Meldahl.

A. No, the limited police power available in Grantsville, and the size and temper of the crowd I saw on the street that day, I would say no.

Q. And would or would not worse confusion and more brawls and trouble occur if the police authorities did try to interfere?

A. In my opinion, that is true.

Cross-examination.

By Mr. Meldahl:

Q. Mr. Reed, I believe you stated that you saw Mrs. Mathews and Miss Kelley distributing this literature from October to March about every Saturday, and that the first time any crowd of particular size gathered about them was on March 7. Is that not true?

Mr. Hamilton: Question objected to because the witness said no such thing.

A. I believe that is about the time I said I saw a large crowd gathered.

Q. And I believe that you said that as you went from the bank toward the drug store you passed Mrs. Mathews standing on the sidewalk in front of the curb? Did you have any trouble proceeding along the sidewalk and across the street at that time?

A. The sidewalk was crowded all along there, but at that time I saw no evidence of any disturbances of any kind.

Q. Was the crowd that was gathered there just the regular [fol. 37] Saturday crowd or was it a special group that was assembled before Mrs. Mathews?

A. I do not know, of course, what impelled them to gather there, but my opinion is it was due to both causes you mentioned.

Q. Was there any appreciable number of people giving any particular attention to what Mrs. Mathews was saying or doing at the time?

A. Yes, I think that most of those people in front of the store were probably waiting there because they thought that some kind of trouble might arise. I do not know, of course, why they were there. I am merely judging from the fact that there were a lot of them there on the corner.

Q. Was Mrs. Mathews making any speeches.

A. I would say she was not.

Q. Well, how did the people there gather any notion that something was going to happen?

A. Mr. Meldahl, I think the explanation of that is that there was a bitter undercurrent of feeling against the supposed teachings of this sect. I know from my own experience that there had been proposals of violence long before this occurred, in at least one group in this community, and those proposals were rather held down by cooler heads within the group. I will express it that way. The situation was such that it was likely to explode any minute.

Q. Now what group was it that you speak of in which the cooler heads held down the proposals of members to do violence to Mrs. Mathews and Miss Kelley.

A. I will have to qualify that by saying that, strange as it may seem, I never heard any proposals to do violence to Mrs. Mathews and Miss Kelley. It was rather believed in the group of which or to which I have referred that Mrs. Mathews and Miss Kelley were well-intentioned people temporarily led astray by outsiders, and the only proposals of violence concerned these outside members of the sect.

Q. Well, what group was it that you say these discussions went on in?

A. That was the American Legion, of which I am a member.

Q. Then, if you say there was no consideration there of doing any violence to Mrs. Mathews and Miss Kelley, what was the reason to suppose that anything was going to happen that day. Were any other persons present than Mrs. Mathews and Miss Kelley distributing this literature?

A. Not, I believe, on that day. At least, I did not observe anybody else.

Q. Then why did the crowd on the day that you say anticipate some trouble there concerning Mrs. Mathews, and wait around to see what was going to happen?

A. Of course, I do not know the answer to that question. [fol. 38] I feel from my observation of the crowd as I went by that they rather anticipated something, but I do not know.

Q. Had Mr. Charter Shaffer been circulating among that crowd prior to that time he asked you to do something about it?

A. I do not know.

Q. Now, in your direct examination you said that when Shaffer left you and went back toward Mrs. Mathews that people began to crowd forward.

A. That is correct.

Q. Now, isn't that the first time that the people began to crowd forward there?

A. I would say not.

Q. Why was it that you testified in your direct examination that they began to crowd forward?

A. It must be understood that there were a large number of people gathered not only on the corner in front of Mr. Mathews' store but also on the other corner in front of what used to be called Ayers' Grocery Store. Mr. Shaffer accosted me in a rather loud tone of voice and while the conversation between Mr. Shaffer and myself took place quite a large crowd collected about us. When Mr. Shaffer left me that crowd followed in behind him, so to speak, and that is why I used the term that they began to gather over there.

Q. Mr. Reed, wasn't it what Charter Shaffer was doing and might do that caused the crowd to gather more than what Mrs. Mathews was doing or might do?

A. My opinion and belief is that it was due to both of them and what might be likely to occur there.

Q. Was Mrs. Mathews indicating in any way that she was going to do any different than she had been doing?

A. I think not.

Q. Was Charter Shaffer stirring around there and talking loudly and talking like he might do something else in regard to what he thought ought to be done.

A. That I do not know back of the time he accosted me on the street.

Q. From that time on, I speak of.

A. That is correct, but it must be understood that the time that elapsed between the moment when Charter Shaffer accosted me and when this trouble took place over there was an extremely short period of time, probably less than one minute.

Q. And in that minute the crowd surged in there?

A. Yes, sir, they surged.

Q. Now can you name any particular person that expressed an opinion such as "she had it coming to her"?

A. I can't name that fellow; I know his face but didn't [fol. 39] know his name. Some fellow was standing there in the street and I heard him say that.

Q. Now do the public authorities in Grantsville ordinarily deprive citizens of the right to go about lawful business because of the possibility that somebody may wrongfully harm them.

A. Repeat the question again.

Question was read by stenographer.

A. Answer is no.

Q. When there is any particular need to quell a riot here, the sheriff and the police and the state police all have power to deputize the ordinary citizen to assist them, do they not?

A. That is right.

Q. The authorities can call in as many state police as they feel necessary, can't they?

A. That is correct.

Q. And the National Guard can also be summoned if it is necessary?

A. Well, I believe no right now. If we had a National Guard at home that might be true.

Q. The principle wrong-doers in such mob action can ordinarily be arrested and be dealt with according to law?

A. I believe so, and I believe Charter Shaffer was arrested and it seems to me I saw him down to the Justice's office after that.

Q. And didn't Charter Shaffer plead guilty and pay a fine.

A. I don't know about that. I don't know.

Q. Mr. Reed, will you explain how you were able to see the fight with as large a crowd between you in the center of the street and where this fight occurred?

A. I believe that I testified that people crowded in there and I didn't see all the fight. I remember very distinctly seeing the persons in front of me sort of part and young Bill Mathews and Charter Shaffer were grappling together apparently, at first on the curb and then out on the street, and then I saw them going down, and that is all the fight that I saw.

Q. I wish to ask you, Mr. Reed, if the card I hand you does not contain the preamble of the constitution of the American Legion.

A. It does.

Q. Does the Grantsville post of the American Legion subscribe to the preamble of the constitution of the American Legion?

A. It does.

Q. I wish to have read into the record the preamble of the constitution of the American Legion.

[fol. 40] Preamble to the Constitution

"For God and country, we associate ourselves together for the following purposes: To uphold and defend the Constitution of the United States of America; to maintain law and order; to foster and perpetuate a one hundred per cent Americanism; to preserve the memories and incidents of our association in the great war; to inculcate a sense of individual obligation to the community, state and nation; to combat the autocracy of both the classes and the masses; to make right the master of might; to promote peace and good will on earth; to safeguard and transmit to posterity the principles of justice, freedom and democracy; to consecrate and sanctify our comradeship by our devotion to mutual helpfulness."

Re-direct.

Mr. Hamilton:

Q. You have been asked on cross-examination as to the duties of officers of the town of Grantsville, of the county authorities, and state authorities in case of a riot in Grantsville. I believe you have lived in Grantsville since 1935.

A. That is correct.

Q. Did you ever see any riot or any proceeding that resembled a riot prior to the proceeding about which you have testified before or since, in Grantsville I mean.

A. I have not.

Q. You have testified that so far as you knew or heard there was no individual feeling against Mrs. Mathews and Miss Kelley on the part of those whom you say did have a feeling of resentment. It is true, is it not, that the feeling of resentment was not particularly against any individual but was against the belief which the resenters believed the defendants held. That is, that it is improper to yield the salute to the flag.

A. That is correct.

ARLAN G. BURNS, being a witness of lawful age, was next introduced on behalf of the plaintiff, and after being duly sworn deposes as follows:

Cross-examination.

By Mr. Hamilton:

Q. Do you live in Grantsville, Mr. Burns.

A. Yes, sir.

Q. State what, if any, official position you hold in the Town of Grantsville.

A. Mayor of Grantsville.

Q. You are acquainted with the two defendants, Mrs. Mathews and Miss Kelley, are you?

A. Yes, sir.

Q. In your capacity as mayor, state whether or not you [fol. 41] received any complaints beginning along in October, 1941, and lasting up until about March, 1942, against the assembling on the streets of Grantsville by the defendants and their circulating or distributing certain literature.

A. Yes, sir, I have.

Q. Tell just what the nature of these complaints were, and what happened.

A. The nature of the complaints were practically all the same, and that was a request like this: Can't something be done about the Jehovah's Witnesses distributing this literature on the streets and sidewalks.

Q. Were those complaints many or few?

A. Several.

Q. Did they occur all at one time or were they scattered over a period of time?

A. Scattered over a period of time.

Q. State what you did to correct the complaints.

A. The town has no ordinance prohibiting the sale of any literature as far as I could find, but I had made inquiry to lawyers ascertaining whether anything legally could be done at two different times, I will say.

Q. And you were informed that so far as the town laws went you were powerless?

A. Yes, I was powerless as far as the town laws were concerned.

Q. Did you yourself see any of these assemblages, or what went on at them? If you did state what it was.

A. At two different times I saw Mrs. Mathews on the corner of Court Street disposing of this literature.

Q. State whether or not there was any crowd assembled around her.

A. There was not at the two times I saw her.

Q. On what day of the week.

A. On Saturdays.

Q. You spoke of the two times. Was there another time when you saw her.

A. No, I just recall the two times I saw her.

Q. Did you see the occurrence of March 7?

A. No, I wasn't down there. I was in my office at that time.

Q. Were any complaints made on that day.

A. Yes, sir.

[fol. 42] Q. Who made the complaint?

A. Mr. Ike Snyder, and Mr. Shaffer. Charter Shaffer.

Q. Were complaints made you that by reason of these assemblies the streets and sidewalks of the town were being obstructed?

A. Yes, sir.

Q. Were complaints made that the feeling was growing bitter among the people against either the defendants or Jehovah's Witnesses or the things they were supposed to teach and believe in?

A. That is right, sir.

Q. I believe when you found out that you and your office were powerless in the matter that you were to some extent instrumental in bringing this suit?

A. That is right, sir.

Q. State what was your reason in helping with the suit.

A. In order to quell street disturbances and possible violence, I would say. And congestion.

Q. You mean of the streets?

A. Yes, sir.

Q. Did you apprehend possible violence?

A. I talked with Mr. Shaffer when he and Mr. Snyder came up to my office and made this similar request as stated before, that something should be done about this, and I told them that there was nothing, as far as I knew, that I could do about it.

Q. This suit, I believe, was instituted about six days after March 7th last. State whether or not you have received any complaints or have heard of any disorders occurring on the streets of Grantsville since this suit was brought and the temporary injunction granted.

A. There has been none.

Q. Have the Saturday afternoons been orderly, or not?

A. Yes, sir, orderly.

Q. When this suit was brought did you apprehend that violence or brawls or disorders or interference with traffic on the streets would occur thereafter unless a civil suit was instituted?

A. Yes, I anticipated a repetition of the same thing. Does that answer your question?

Q. Yes. Now were Charter Shaffer and Ike Snyder the only persons who made complaints to you?

A. At this particular day?

Q. Any day.

A. No.

[fol. 43] Q. Were the complaints many?

A. Yes. It is just owing to what you would call many there.

Q. Tell about how often you received them.

A. Well, for a period of two weeks I would say someone had talked to me most every day about it.

Q. Can you say as to whether or not the complaints and apparent disaffection on the part of the people became greater after December 7, last?

A. Yes, sir.

Q. Did you receive any notice that violence would or might be done to the defendants in the event they persisted in their congregating in the streets and distributing literature?

A. I remember Mr. Snyder saying that "If this thing keeps up someone is liable to get hurt." No personal mention.

Q. Can you say whether or not that was the feeling on the part of other citizens of the town?

A. In my opinion, yes.

Q. Can you say whether or not, in your opinion, the congregation by the defendants on the street, and their distribution of literature constituted a public nuisance, or a nuisance to the citizens of the town.

A. In my opinion, yes.

Cross-examination.

By Mr. Meldahl.

Q. Mr. Burns, when you consulted lawyers as to whether or not you had authority to do anything about these matters did you ask them as to whether or not you could stop the sale of literature, or whether or not you could stop crowds congregating and interfering with traffic along the street?

A. I asked them what could be done about disposing of literature that the majority of the people of the town were so bitterly against. It was from a standpoint of confusion, congestion and possible violence.

Q. Did you talk to a majority of the people of the town directly in this matter.

A. Not to the majority of the people.

Q. Now, you didn't ask anyone if the authorities of the town could stop the blocking of traffic either on the sidewalk or on the street, did you? Why didn't you ask them about that?

A. We have an ordinance about that.

Q. You knew to begin with for a certainty that you had authority to stop congestion in your streets and on your sidewalks?

A. Yes, we can do that.

[fol. 44] Q. Then it isn't a matter of the use of the streets that you were concerned with?

A. My statement covers that just a while ago that I made.

Q. Have you ever read any literature distributed by Jehovah's Witnesses?

A. No, sir.

Q. You do not know what the tenets of the Jehovah's Witnesses are except by common repute? Is that right?

A. That is right.

Q. When Mr. Snyder came to you and expressed that opinion that "if this keeps up somebody was liable to get hurt" who did he indicate or imply might do the hurting?

A. I do not know, sir.

Q. Did you understand from what he said that Mrs. Mathews or Miss Kelley might hurt anybody?

A. No, I didn't understand that. That is just what he said. "Someone is liable to get hurt".

Q. You say there is no ordinance or no law that literature of this character, so far as you know, cannot be sold?

A. There is no ordinance against selling it as far as I know.

Q. Now when a person comes to you and tells you that if somebody comes out on the streets of Grantsville that somebody is going to hurt him, do you ordinarily go to that person and tell him not to come out on the streets?

A. No, sir.

Q. As a matter of fact, when somebody threatens to do a wrongful act on the streets of Grantsville don't you ordinarily warn him that he will be punished accordingly?

A. That is right.

Q. Mr. Burns, do you have any reason to believe that if the police of Grantsville had been on the job at the time and place when this occurred that they couldn't have broken up the disorder that you say occurred there?

A. I do not know. I did not see this crowd that you speak of.

Q. The officers have the power to deputize as many citizens as they need to quell disturbances, don't they?

A. Yes, sir. We have a policeman hired for part time. He isn't a full time policeman.

Q. This matter occurred right straight across the street from the county court house, and within 200 yards of the sheriff's headquarters, did it not?

A. Yes, sir.

[fol. 45] Q. There is also a state police located in Grantsville, is there not?

A. Yes, sir, he is here part of the time. He has the county, of course.

Q. Don't you think that your duly constituted authorities here in Grantsville have the power to deal with disturbances in the usual lawful manner.

A. They have the power to quell disturbances if they are not too large. Of course, they couldn't quell a mob—mob violence. They do not have sufficient man power.

Q. On this occasion not more than two or three persons were engaged in the fracas.

A. I do not know what took place there.

Q. And you have no reason to believe that even one policeman on the job could not have taken into custody those that were responsible for this incident?

A. I don't know what took place there.

Redirect.

By Mr. Hamilton:

Q. Considering the state of feeling the people have been in, especially since December 7, 1941, and were in on March 7 last, had all the police at your disposal acted in trying to quell a mob stated to be from 150 to 250 persons, would not more disorder, more brawls, and more trouble have resulted than has resulted or is likely to result by the suit in chancery now pending before the court?

A. I am confident that is true, yes, sir.

Q. State whether or not the interference by many officers, in your opinion, would have caused more trouble than did occur on March 7.

A. In my opinion, that is right.

Cross-examination.

By Mr. Meldahl.

Q. Mr. Burns, isn't it true that the great majority, the overwhelming majority of people of Grantsville and Calhoun County are law-abiding citizens?

A. They have that record.

Q. And isn't it true that the overwhelming majority of people of Grantsville and Calhoun County uphold the processes of law.

A. They are orderly people, yes, sir.

Q. And isn't it true that the overwhelming number of people of Grantsville and Calhoun County respect the offi-

cers of the law that do their duty, and expect them to do their duty.

A. That is right.

[fol. 46] Q. Then why did you indicate that *do* you anticipate that such a large number of the citizens of this town and county would undertake the law in their own hands and overthrow the constituted authorities and undertake to administer mob violence in the center of this town, and across the street from your court house?

A. Due to the present state of emergency that we were all thrown into on December 7, and the attitude toward an organization that did not honor the flag they expected to protect them.

Q. Don't the people of Grantsville and Calhoun County, before they undertake to judge, investigate the truth of the charges?

A. The people of Grantsville are like any other good American citizens.

Q. Then doesn't that mean that they accord every person in their midst the protection and rights afforded by law?

A. I would say so.

Q. And guaranteed by the constitution.

Redirect.

By Mr. Hamilton:

Q. And isn't it also true that the people of Grantsville and Calhoun County are intensely patriotic? That they have sent their sons to the far corners of the earth to perpetuate and keep the beliefs which they as citizens and their forefathers have had and kept for more than 150 years, and that they bitterly resent either rightly or wrongly, the appearance upon the streets of people of any sect or belief who they think are trying to interfere with or disorganize or affect the morale of the American people even in so small a thing as refusing to give the salute to the flag?

A. Yes, sir.

Cross-examination.

By Mr. Meldahl.

Q. Mr. Burns, the people of Grantsville and Calhoun County believe in a free country, do they not?

A. Yes, sir.

Q. They believe in freedom of speech, freedom of religion, and freedom from want?

A. Yes, sir.

Q. They want to preserve these freedoms at all costs, do they not?

A. Yes, sir.

Q. Do you feel that the people of Grantsville and Calhoun County are willing to have these defendants punished without a legal proceeding in the courts in which all the facts and circumstances can be carefully considered by a jury of twelve peers drawn from this county.

Question objected to by Mr. Hamilton.

A. I don't know.

[fol. 47] Ivan Umstead, being a witness of lawful age, was next introduced on behalf of the plaintiff, and after being duly sworn deposes as follows?

Direct examination.

By Mr. Hamilton:

Q. Where do you live, Mr. Umstead?

A. Grantsville, Calhoun County.

Q. What, if any, official position do you have in Calhoun County?

A. Sheriff of Calhoun County.

Q. Are you acquainted with the defendants, Mrs. Mathews and Miss Kelley?

A. I am.

Q. State what you know, beginning with the first, of any activities of the defendants, or either of them, on the streets of Grantsville in selling literature which led up to the institution of this suit.

A. Well, it seemed to be a Saturday afternoon occurrence, as has been stated before, and several requests were made that something should be done about it to stop it.

Q. What do you mean, requests made by whom, and to stop what?

A. I would say by the citizens of Grantsville and Calhoun County to stop the distributing of this literature on the streets.

Q. What do you know of the activities of these defendants?

A. I do know that it caused quite a disturbance, and people would gather in expecting something to happen, I don't know what all.

Q. Were you present on the street on March 7 last?

A. Well, I was after. I did not see the first of it.

Q. Just tell what you saw.

A. I was in my office, which is in the back room of the new jail building and you can't see what is going on. The telephone rang and Mr. Burns, the mayor, called me from his office and wanted to see me, and from there I learned more of what had been going on. He told me about the trouble with Mrs. Mathews' son and Charter Shaffer, so I immediately came over on the street and then the sidewalks and streets were about all filled with people. I found Charter Shaffer, and he thought that I was trying to take sides in it against him, and I told him I was not, that I only wanted to quiet the disturbance, and I seen everybody there was so mad about it you couldn't do anything with them.

Q. Mad at whom?

A. Well, I would say at the ones that were Jehovah's Witnesses.

Q. You mean the defendants?

A. Yes, sir.

[fol. 48] Q. Were you there when Mrs. Mathews was struck or pushed by Mr. Shaffer?

A. No, sir.

Q. About how many people, in your judgment, were there?

A. Well, of course, it would be a guess. I would say about 200.

Q. Was there any obstruction of the streets and sidewalks by the crowd?

A. There was.

Q. Could automobiles pass along Main Street?

A. No, sir.

Q. That was on account of the crowd?

A. It was.

Q. How long did this crowd stay assembled, if you know?

A. Well, I should say an hour.

Q. Did any people, or group of people, discuss with you that afternoon, this matter?

A. They did. Quite a few. But I wouldn't be able to say any particular one.

Q. What was the general talk they had with you. What did they want?

A. The general feeling was that this literature was unpatriotic and should not be distributed on the street.

Q. Was there any feeling of resentment among these people against the defendants?

A. I would say there were.

Q. Did you feel and do you feel that many other riots and brawls would have occurred against the defendants had they been permitted to continue to distribute the literature on the street?

A. I think so.

Q. Do you think that might have led to personal violence against them?

A. I do.

Q. What has been the condition of the sidewalks and streets of Grantsville, and especially at the corner of the Mathews' Store, since the injunction in this case was granted, on Saturday Afternoon?

A. It has been nothing out of the ordinary; there are always a few more on Saturday.

Q. Was there any disorder.

A. No disorder to speak of.

[fol. 49] Cross-examination.

By Mr. Meldahl:

Q. Mr. Umstead, is it considered unpatriotic in Grantsville and Calhoun County to teach the Holy Bible?

A. I guess not.

Q. Is it considered unpatriotic here to observe God's commandments, as set forth in the Holy Bible?

A. No.

Q. Did anybody on the streets on March 7 fail or refuse to obey any orders that you gave them as sheriff of Calhoun County?

A. Well, to answer that, I would say that they did not, but they would be right back on that spot, and you couldn't keep them off this spot. I wouldn't be able to.

Q. You didn't attempt to disburse the crowd?

A. Not much.

Q. You didn't attempt to deputize any citizens to help you.

A. Yes, sir. We were there.

Q. None of the public offered to resist anything that you tried to do, did they?

A. They are very law-abiding citizens in Grantsville.

Q. You didn't arrest either Mrs. Mathews or Miss Kelley, did you?

A. No, sir.

Q. You didn't know of any way in which they had violated the law or you would have arrested them, wouldn't you?

A. I had no complaints, outside of which I mentioned before.

Q. And when these people came to you and expressed the wish that you or someone would do something to stop them from selling the literature on the streets, didn't you tell them that you had no authority to do it?

A. Yes, that is right.

Q. Now, you didn't talk to many of the people, any substantial number of the persons of the crowd that was out there?

A. I would say I talked to quite a few.

Q. About how many different persons did you specifically talk to?

A. I couldn't say.

Q. You could estimate, couldn't you?

A. I am talking about the feeling.

Q. I want you to estimate the persons you talked to specifically in regard to the matter.

A. I couldn't answer that.

[fol. 50] Q. Would it be nearer 10 or 25 or 50?

A. I would say I talked to 10 persons, I don't know exactly.

Q. Well, you couldn't tell very well by talking to 10 how 200 felt?

A. Yes, I could. I could tell by their actions.

Q. Now, wasn't the attitude of these people based upon the assumption or the hearsay statements, that they were unpatriotic?

A. I don't know.

Q. Wasn't it based more specifically on hearsay statements that they didn't salute the flag?

A. Yes, that is the general feeling.

Q. Well, you don't think the people of this town regard this as the only evidence of a person's patriotism?

A. I would say not altogether.

Q. A person's loyalty and patriotism can be demonstrated by other means couldn't it?

A. I would say it could.

Q. And a person can salute the flag without being loyal to it, can't he?

A. Well, I couldn't.

Q. But you realize that some people could, don't you?

A. They might.

Redirect.

By Mr. Hamilton:

Q. You have been asked on cross-examination as to what the people of Grantsville and Calhoun County consider to be patriotic or unpatriotic. I will ask you to state whether or not the people of Grantsville and Calhoun County believe, either their belief is right or wrong, that it is unpatriotic to refuse to salute the flag?

A. I would say they do consider it unpatriotic.

W. H. Francis, being a witness of lawful age, was next introduced on behalf of the plaintiff, and after being duly sworn deposes as follows:

Direct examination.

By Mr. Hamilton:

Q. Where do you live?

A. In Grantsville.

Q. What is your occupation?

A. Radio service man, but at the present time I am assistant to the chief of police.

Q. I believe you were not on the police force of Grantsville on March 7, or prior to that time.

[fol. 51] A. I was put on the police force about 7 o'clock in the evening about March 7, any way on the date they had the trouble between Shaffer and Mrs. Mathews.

Q. Were you present when they had the trouble?

A. No, I wasn't.

Q. Were you in town?

A. I was in town, but was down at my place of business.

Q. When did you first come on the street?

A. I came up on the street and started home up through the alley. The mayor overtook me on the bridge and asked me if would work for him, and I told him I would before I knew what he wanted.

Q. Did you learn from the mayor that there had been some unusual trouble on the street that day?

A. Yes, he said they had had trouble over in town.

Q. So you went on duty about 7 o'clock?

A. Yes, about 7 o'clock.

Q. Where were you stationed?

A. Just along Main Street.

Q. Was there any unusual crowd?

A. Well, yes. There seemed to be an unusually large crowd.

Q. Did the crowd seem to be affected in any way, or were they inclined to be peaceable or complaining?

A. Yes, I heard quite a bit of complaining.

Q. Complaining about what?

A. Complaining about the trouble that occurred that afternoon.

Q. Who were the complaints against?

A. They seemed to be practically all against this Jehovah's Witnesses.

Q. Did they include the defendants, Mrs. Mathews and Miss Kelley.

A. Yes.

Q. If they expressed any resentment against the defendant, what was the nature of it?

A. Well, they said if there wasn't something done about it, or it wasn't quit, there would probably be blood-shed.

Q. If what wasn't quit?

A. This selling or distributing of literature on the sidewalks.

Q. Were you present at any of the other times when the [fol. 52] Jehovah's Witnesses were distributing literature?

A. Not more than once that I remember of.

Q. When was that?

A. I couldn't tell the exact date. Maybe a Saturday or two before March 7. I just walked by.

Q. Was there any particular crowd that time.

A. Well, I didn't seem to notice any unusual crowd at that time.

Q. What has been the condition on Main Street in the vicinity of the W. J. Mathews' Store since the injunction in this case was awarded?

A. I have noticed no disorders of any kind.

Cross-examination.

By Mr. Meldahl:

Q. Mr. Francis, you don't recall any disorder that occurred before this injunction except on March 7, do you?

A. No. I didn't spend much time on the street as I was pretty busy at my place of business.

Q. When you heard these people which you say were complaining, all they were doing were expressing their opinion that Jehovah's Witnesses should salute the flag?

A. That seemed to be one of the main reasons for the trouble.

Q. Now when these people you speak of spoke of feeling there would be blood shed if the sale of this literature continued, they didn't indicate that Mrs. Mathews or Miss Kelley would start spilling anybody else's blood, did they?

A. Well, no, they just didn't say which side would do this.

Q. It wasn't your understanding that that was the side that was going to do that, was it?

A. Well, I really didn't know which side might do it. Of course, if you get a riot started both sides might.

Q. You didn't think for a moment that Mrs. Mathews or Miss Kelley were going to do anybody bodily harm, or that these people were speaking of Mrs. Mathews or Miss Kelley doing serious bodily harm which would result in the blood of other people being spilled?

A. I don't know that they had any particular reference to any certain parties when they made this statement.

Q. Wasn't it your impression that they merely meant that other acts such as Charter Shaffer committed would be committed?

A. That was the way I had taken it—more fights like that one.

Q. How tall are you?

A. 6 feet 3 inches.

[fol. 53] Q. What do you weigh?

A. In the neighborhood of 250 pounds.
Q. What is your age?
A. 34.
Q. Do you think you would have any particular difficulty in handling any persons that would start anything such as these people were talking about in case it was started?
A. Ordinarily not, unless there was mob violence, or something of that kind.
Q. Then you could deputize as many people to help you as you wanted, couldn't you?
A. I guess that is right.

Redirect.

By Mr. Hamilton:

Q. You don't mean to say that you could handle a crowd of 250 people.
A. No.
Q. State whether or not any reasonable sized number of officers could handle a crowd that large in a riot.
A. In my opinion, it would be a pretty difficult thing to do.
Q. As a matter of fact, if the officers would try it, wouldn't there be more disturbances than if they did not try it.
A. That is right.

Cross-examination.

By Mr. Meldahl:

Q. As a matter of fact, in cases of that character about all you usually have to deal with is a few ring leaders, isn't it?
A. I don't know.

Miss Nettie Stump, being a witness of lawful age, was next introduced on behalf of the plaintiff, and after being duly sworn deposes as follows:

Direct examination.

By Mr. Hamilton:

Q. Where do you live?
A. In Grantsville.
Q. What part of Grantsville?
A. On Main Street.

Q. About how far from the Masonic Building in which the W. J. Mathews' Store is located?

A. I wouldn't know just what the distance is.

Q. A couple of hundred feet?

A. I would think so.

[fol. 54] Q. State whether or not you had any occasion to see or have observed any of the activities of the defendants, Mrs. Mathews and Miss Kelley, in circulating or disposing of literature on the streets of Grantsville, in the last 8 or 10 months.

A. Well, on Saturday afternoon about 1 o'clock I was going after my mail, and Mrs. Mathews was standing in front of Mathews' store. She started to smile and speak to me, and I saw a look of horror come into her face, and I looked to see what it was and Charter Shaffer was right behind her and he stepped up to her and grabbed the papers out of her hand and tore them up and he said, "Bess, we are tired of having this on the street and we are not going to put up with it any longer." He tried to take the other literature she had and they scrambled over it quite a bit, and I only looked back one time and that was when that was going on. I went into the post office and I was so frightened and nervous, and Lennie Ball came up and asked if I was sick, and I said no, just scared, and then I told him what the trouble was, and got the mail. I went home, and then went up to Dr. Riddles and told him the trouble and when we were talking we looked out of the window and saw the commotion between her son and Mr. Shaffer.

Q. What would you say was the approximate number of people gathered around the store?

A. I would think there was about 150 people. I don't know where they came from, but there seemed to be a storm of people.

Q. Were the sidewalks obstructed by the people?

A. Yes, sir.

Q. What would you say about any obstruction on Main Street?

A. Two cars came along and couldn't pass.

Q. Would you say that the crowd extended from sidewalk to sidewalk on Main Street?

A. Yes, to the second-hand store.

Q. That would be across Court Street. Did you have any trouble getting through the crowd?

A. No, there was not such a crowd as there was later on.

Q. Did you see any other assemblages that the defendants had on the street before that day.

A. Well, there seemed to be kind of an air on Saturday afternoon when she was out there, and people complained about her being on the street.

Q. Did the crowds gather around?

A. Yes, they did gather at the second-hand store and look around.

Q. Did you hear any complaints on the parts of anybody who was in these crowds?

A. Yes.

Q. What were they about.

[fol. 55] A. It was in a way that they felt they were not true to America and they did not feel the literature should be sold on the street.

Q. Was that complaint general by the people that you heard?

A. Yes.

Cross-examination.

By Mr. Meldahl:

Q. Miss Stump, you stated 150 people were on the street.

A. It looked like there were that many people. It was just a guess, but there was a large number.

Q. I wanted to know if — meant 100 or 50 or 100 and 50.

A. I meant 100 and 50.

Q. About how many people told you that they didn't think they should be allowed to sell literature on the streets?

A. I heard it so many times I couldn't estimate how many it would be.

Q. Do you think as many as 25 persons mentioned that to you.

A. It was a general topic.

Q. Can you name any specific individual that said that to you.

A. Well, I don't know as I can think of anybody.

Q. Of all this great number that you heard make this statement can't you recall a single, solitary individual.

A. I expect I could.

Q. I will ask you to name them.

Mr. Hamilton objected to question because the witness has already stated it is impossible to name them. It was everybody she talked to about it.

A. Mrs. Bickerstaff was one, but I can't recall anybody else right now.

Q. I believe you said when you went to the post office and back there weren't many people on the street.

A. No, there weren't so many.

Mr. Dudley Lutz, being a witness of lawful age, was next introduced on behalf of the plaintiff, and after being duly sworn deposes as follows:

Direct examination.

By Mr. Hamilton:

Q. Where do you live.

A. Here in Grantsville.

Q. Do you have any official position.

A. They call me the town cop.

[fol. 56] Q. You are the town sergeant. Are you acquainted with the two defendants, Mrs. Mathews and Miss Kelley?

A. Yes, sir.

Q. Did you, along from October, 1941 to March 1942, receive any complaints about the activities of the defendants?

A. Yes, sir. I have had several people complain to me about it, and also heard them complain when they were talking to each other on the street.

Q. I believe you were not in Grantsville on March 7.

A. No, sir, I was not.

Q. Were you present at any other meetings that the defendants held on the streets of Grantsville before that time.

A. Meaning, did I see them sell literature?

Q. Yes.

A. Yes, sir.

Q. Were there any crowds around then?

A. Sometimes there were crowds of people around them, and other times there were not, and sometimes they sold their literature and sometimes not.

Q. You stated you received complaints. What was the nature of this complaint?

A. It was that they shouldn't be allowed to sell that kind of literature on account of them not recognizing the emblem of the United States, the flag.

Q. You mean the people who complained meant it was improper to salute the flag? What can you say as to whether or not in your opinion the activities of the defendants along these lines, ending up about March 7th last, constituted a nuisance in the town, in your opinion.

Objection by Mr. Meldahl.

A. In my opinion, and what I could hear talked on the street, it was a nuisance.

Q. State whether or not the people appear to be resentful against the defendants.

A. Yes, sir, they were.

Q. You might say whether or not they seemed to think it was your duty to take the defendants off the streets.

A. Yes, some thought I ought to do something toward it.

Q. When did you return to Grantsville on March 7?

A. That night.

Q. About what time?

[fol. 57] A. About 7 or 8 o'clock.

Q. Did you hear of the disorder that had occurred that day?

A. Yes, sir.

Q. Were you up on the street that evening after you returned?

A. Yes, sir.

Q. Were there any crowds still gathered around?

A. There was quite a bit of talk about it.

Q. Where were they gathered mostly?

A. At that time they were mostly all around, not just in one position.

Q. Did the day's trouble seem to be the subject of their discussion?

A. Yes, mostly.

Q. Could you detect any feeling or resentment against the defendant on account of the day's trouble?

A. Yes, among the town people and a few of the country people that were in, it was quite strong.

Q. State whether or not from the talk you heard, as well as the general sentiment of the people, if you felt that the defendants might be in danger of bodily harm if they continued to distribute their magazines on the street?

A. Well, if they went according to their feelings of what they said there might be.

Q. Did you hear any person make any direct threats?

A. Not any direct threats, no.

Cross-examination.

By Mr. Meldahl:

Q. Mr. Lutz, did any of these people that you talked with say they had read any of this literature?

A. Well, I believe some said they had read some.

Q. Did any of them tell you what they had read that they objected to?

A. No.

Q. Did any of them tell you anything either Mrs. Mathews or Miss Kelley had said that they objected to?

A. No, I don't think so.

Q. Now when you speak of the people being resentful, was it due to anything that you know of that actually appeared in the literature, or was actually said by Mrs. Mathews or Miss Kelley, or was it due merely to the rumored understanding of the people?

A. Well, it wasn't anything that was said through Mrs. [fol. 58] Mathews or Miss Kelley, but their attitude and what was shown at the school to Lavon Kelley, was where it came from.

Q. And you say that the attitude of the crowd was based upon the failure of Lavon Kelley to salute the flag at the school?

A. It was in that order, I believe.

Q. Now, as a matter of fact, Mr. Lutz, this commotion here occurred on March 7, and the affair at the school building didn't come until along just before graduation time, did it?

A. You are right, I think.

Q. Do you know of any case when either Mrs. Mathews or Miss Kelley on the streets of Grantsville were called upon or were expected to salute the flag that they failed to do it?

A. Lavon Kelley did at the school.

Q. I am talking about on the street.

A. I don't know that they had any occasion to on the street.

Re-direct.

By Mr. Hamilton:

Q. If I understand you correctly, the principle feeling that the people had against the defendant was because it was believed that they taught a belief that it was improper to salute the flag.

A. Yes, sir.

Mr. F. F. McCoy, being a witness of lawful age, was next introduced on behalf of the plaintiff, and after being duly sworn deposes as follows:

Direct examination.

By Mr. Hamilton:

Q. Where do you live?

A. Grantsville.

Q. What is your occupation?

A. Cashier of the Calhoun County Bank.

Q. Have you any office in Calhoun County? If so, what is it.

A. Member of the Board of Education.

Q. How long have you been a member of the Board of Education?

A. Since July 1, 1941.

Q. I wish you would tell in your own words anything connected with Miss Lavon Kelley that you know of in the high school of this county, happening this year. To begin with, I will ask if your Board had any instructions from the State Board of Education relative to pupils in school saluting the flag.

A. Yes, they did.

Q. What were those instructions?

A. I can't give them to you word for word, but the in-[fol. 59] structions were that our teachers were to teach patriotic exercises in the schools and see that they were

carried out, and if they were not the teachers and principals were instructed to report back to the Board.

Q. Was saluting the flag one of those patriotic exercises.

Mr. Meldahl:

Q. Did your board pass the information to the teachers of the county?

A. Yes, sir.

Q. To the principle of the High School?

A. Yes, sir.

Mr. Hamilton:

Q. Did you receive any report of the principal of the High School relative to any of the pupils refusing to salute the flag?

A. Yes, sir.

Q. What pupil was it refused?

A. Lavon Kelley was the only one he mentioned.

Q. What did your board then instruct the principal to do in the matter.

A. They instructed him to insist that she did participate, and if she did not to report back to the board.

Q. What was the report?

A. That she did not.

Q. Then what happened. I mean, did the principal insist upon her doing it?

A. I am doubtful about that.

Q. Didn't he make a report to you that he didn't?

A. Now that is the way I understood him. That he excused her from classes when this exercise happened.

Q. You mean when this ceremony took place.

A. Yes, and when this took place in some other teacher's room and he didn't happen to get hold of her she didn't do it.

Q. Do you remember about what time in the school year this happened?

A. I would say it was the latter part of January, or about the 7th of February probably. I am not sure of that date. It was the date Squire Marshall was buried. We had a meeting on the 7th day of January.

Q. To refresh your memory, I will ask you if you did not hold a meeting of your Board at which Mr. McGlothlin, the principal, was present, on January 12?

[fol. 60] A. I couldn't tell you until I looked at the records.

Q. To refresh your memory, wasn't the meeting held on the day Squire Marshall was buried?

A. I remember that day very well.

Q. And further to refresh your memory, wasn't that day the anniversary of Lincoln's birthday?

A. I don't remember about that, but it seems it was a holiday.

Q. What was done in connection with the principal on that day?

A. He resigned on that day.

Q. Under what circumstances?

A. I should say he was asked to leave.

Q. And what was the reason for his being asked to leave?

A. Insubordination. That was a part of our resolution adopted at a former meeting.

Q. Insubordination in what respect?

A. Because he had not carried out the instructions of the county or state boards. Because he had not asked this girl in our opinion to participate in these exercises. In fact, he hadn't even asked her to participate when they came up.

Q. Then it was because of his refusing to require Miss Kelley to salute the flag as the other pupils did.

A. That is right.

Q. What happened to Miss Kelley on account of this refusal? Did she graduate?

A. No, sir. But I would have to check the records to be sure.

Q. Was she refused by the board graduation and her diploma because of her refusal to salute the flag?

A. I don't know about that. She was refused her diploma because she didn't finish school, and that was one of the requirements, that to finish school she must participate. I wouldn't say because she didn't salute the flag exactly but because she did not complete her work.

Q. Did she leave school then because she did not participate?

A. That was my understanding.

Q. She was a senior this year.

A. It was my understanding. I think Mr. McGlothlin told me that.

Cross-examination.

By Mr. Meldahl:

Q. What position do you hold on the Board of Education?

A. Member of the Board.

Q. Now isn't it true that Lavon Kelley was dismissed two weeks before the end of the semester at mid-year?

[fol. 61] A. I couldn't tell you about that, you will have to see the records.

Q. And isn't it true that at the time she was dismissed that she had already taken her final examinations in all her subjects and *and* passed and had been credited with all of the subjects necessary to be entitled to a diploma of graduation.

A. You will have to check the records. I couldn't tell you. I am not teaching in the school.

Q. Didn't W. W. Trent, State Superintendent of Schools, write the Board of Education of Calhoun County requesting that Lavon Kelley be given her diploma, and stating in his opinion that she was entitled to it?

A. You will have to check the records on that.

Q. Mr. McGlothlin made a written statement, setting forth the reasons for his action and gave those to the board and to the public?

A. Yes, he made those pretty public. He printed hand bills and sent them all over the county. I don't know whether he gave the board one, but they got one all right.

Re-direct examination.

By Mr. Meldahl:

Q. I believe Mr. Harold B. Proudfoot was County Superintendent of schools at that time?

A. That is right.

Q. Is Mr. Proudfoot still in this county?

A. No, sir.

Q. Where is he?

A. In Ft. Thomas, Ky. the last time I heard.

Q. He is in the service, is he not?

A. Yes, sir.

MRS. W. J. MATHEWS was next introduced upon behalf of the defendants.

Direct examination.

By Mr. Meldahl:

Q. Your name is Mrs. W. J. Mathews?
A. Yes, sir.
Q. You are the same Mrs. Mathews as is styled in this case as Mrs. Bessie Mathews.
A. Yes, sir.
Q. You have been sworn and testified before in this case.
A. Yes, sir.
Q. Mrs. Mathews, did Mr. Don McGlothlin make an explanation of his conduct as principal of the Grantsville High School in refusing to dismiss Lavon Kelley two weeks before the end of the term and after she had passed her final [fol. 62] examinations, and received credit in all the subjects necessary for her graduation?
A. Yes, he did, and called it "My Defense".
Q. Now, has that statement been printed in any of the publications of the Watch Tower Bible and Tract Society?
A. Yes, it was printed in the last copy of the "Consolation" in full.
Q. Will you furnish the stenographer and introduce with your testimony that portion of the "Consolation" that contains Mr. McGlothlin's "Defense"?
A. Yes, as soon as I can.

Mr. Hamilton: Any answer to the foregoing question and to the introduction of said article, the plaintiff objects.

Q. I now hand you a clipping which I will ask you to identify, and tell from which source it came, if you can.
A. This came from the August 15, 1942, copy of the "Watch Tower Magazine."
Q. What does it relate to?
A. To my pledge to Jehovah, with respect to the flag of the United States.
Q. Will you introduce and make it a part of your testimony in this case?
A. Yes.

Mr. Hamilton: Same objection.

TIMELY USE OF THE PLEDGE

"This experience shows the importance of having memorized the 'Pledge to Jehovah' found on page 28 of the booklet *God and the State*. The magazine publisher asks: 'Good evening, sir, have you had your latest copy of *The Watchtower*?' Man seated in the auto: 'No, I don't believe I care for it.' Publisher: 'Have you ever read *The Watchtower*?' 'No.' 'You see *The Watchtower* explains the present-day events in the light of Bible prophecy.' Man: 'That may be true, but I don't want it; you don't salute the flag.' Publisher: 'No, but "I RESPECT THE FLAG OF THE UNITED STATES AND ACKNOWLEDGE IT AS A SYMBOL OF FREEDOM AND JUSTICE TO ALL".' 'You do?' 'Certainly. Not only that, but "I HAVE PLEDGED MY UNQUALIFIED ALLEGIANCE AND DEVOTION TO JEHOVAH, THE ALMIGHTY GOD, AND TO HIS KINGDOM, FOR WHICH JESUS COMMANDS ALL CHRISTIANS TO PRAY".' 'Well, I didn't know that!' 'And furthermore, as one of Jehovah's witnesses, "I PLEDGE ALLEGIANCE AND OBEDIENCE TO ALL THE LAWS OF THE UNITED STATES WHICH ARE CONSISTENT WITH GOD'S LAW AS SET FORTH IN THE BIBLE." Now what honest, sincere, and law-abiding person can find objection to that pledge?' Man: 'I'm sure I can't. I'm going to take that magazine and find out what is in it for myself.' "

Q. Mrs. Mathews, did you, or to your knowledge did Lavon Kelley, at any time threaten or attempt to spill the blood of anyone else, or attack or injure anyone else here in Grantsville at any time?

A. No, sir. Lavon Kelley nor I would either one injure any person. The work we are engaged in is only helpful to all people in that they may learn what Jehovah's purposes are toward the people, and how the people may take their stand and preserve their everlasting life.

Q. Do you have any fear of serious bodily injury at the hands of the citizens of Grantsville or Calhoun County?

A. No, sir.

Q. Do you think that the officers and authorities of this county are capable of coping with any situation that is at all likely to arise if you continue the distribution of the publications of the Watch Tower Bible and Tract Society?

A. I certainly do think so. They have been ready to cope with any other situation that came up.

[fol. 63] Q. Do you know of any need for the application of any extraordinary remedy to preserve order, to keep the streets passable, the sidewalks passable, and the crowds orderly in the town of Grantsville and in Calhoun County.

A. No, sir, I do not.

* * * * * * *

[fol. 64] Thereupon came BESSIE MATHEWS, a witness of lawful age, who being first duly sworn upon oath, answered and deposed as follows:

By Mr. Meldahl:

Q. 1. Your name is Bessie Mathews?

A. Yes.

Q. 2. You are also known as Mrs. W. J. Mathews?

A. Yes.

[fol. 65] Q. 3. Where were you born?

A. Grantsville, Calhoun County, West Va.

Q. 4. How long have you resided in Grantsville?

A. Always, except from 1923 to the first of the year 1940; during that time I was in Parkersburg.

Q. 5. How old are you?

A. I will be 54 years old in August.

Q. 6. Does Lavon Kelley, your co-defendant, still reside in Grantsville?

A. No.

Q. 7. Where is she at the present time?

A. Akron, Ohio.

Q. 8. Has she moved there permanently?

A. Yes.

Q. 9. It is not anticipated that she will be back here again?

A. Not for any length of time; she may visit here.

Q. 10. The bill of complaint filed against you and Lavon Kelley, in this cause, states that you are members of and associated with an organization known as "Jehovah's Witnesses". Is that correct?

A. Yes.

Q. 11. Are the members of that organization ever known as "Russellites", or any other name?

A. No.

Q. 12. The bill of complaint alleges that one of the creeds and tenets maintained and taught by said organization is

that it is improper, wrongful and sinful to pay any respect or honor to the Flag of the United States, and especially that it is so improper, wrongful and sinful to pay that re- [fol. 66] spect, honor and obeisance to such Flag, which is commonly known as the salute to the Flag; does your organization teach that?

A. No.

Q. 13. The bill further alleges that you maintain and uphold to such tenets and creeds, and profess to believe and say that such respect and salute should not be paid or given by themselves or by any other person. Is that true?

A. It is not.

Q. 14. The bill of complaint further alleges that the organization of Jehovah's Witnesses publishes books, pamphlets, magazines and other papers, and cause the same to be sold, distributed and circulated throughout the country, both in private homes and in public places; is that true?

A. Not Jehovah's Witnesses.

Q. 15. What organization or institution publishes the newspapers and magazines that they claim you have distributed?

A. The Watch Tower Bible & Tract Society, Brooklyn, N. Y.

Q. 16. Is that organization associated with Jehovah's Witnesses?

A. That organization publishes the literature which is the result of the study of the Scriptures and research.

Q. 17. In other words that is an independent Society which publishes the literature used by Jehovah's Witnesses?

A. Yes.

Q. 18. The bill further alleges that one of these magazines or publications is known as "Consolation". Is that correct?

A. Yes.

Q. 19. The bill of complaint further alleges that for several months preceding the institution of this injunction proceeding, that you and Lavon Kelley have continuously and continually been selling, distributing and circulating [fol. 67] the said books, pamphlets, magazines and papers published by this organization? Is that correct?

A. Yes; I don't know how far continuously would go.

Q. 20. And that you sold these magazines, pamphlets, etc., upon the highways, streets and alleys in the town of Grantsville, Calhoun County, West Virginia. Is that true?

A. We placed that literature with any person who wanted it; if they cared to make a contribution they could; if not they could have the literature without making any contribution.

Q. 21. You do not compel any one to accept any of the views set forth in those publications?

A. No.

Q. 22. You simply offer it to them?

A. Yes.

Q. 23. It says that you have offered same and sold same at and near the corner of Williams, Main and Court Streets in said Town of Grantsville. Is that correct?

A. That is where the magazine work was carried on.

Q. 24. Now while you were offering this literature to people in the town of Grantsville, did you cause any large crowds to gather, which obstructed the traffic in the public streets or places?

A. At one time while I was on the street with the magazines a large crowd gathered.

Q. 25. About how large a crowd?

A. I should say about 25.

Q. 26. Was that crowd sufficient to interfere with the passage of automobiles and other vehicles alont the streets?

A. No.

[fol. 68] Q. 27. Was it possible for the regular amount of traffic and the number of vehicles and people in the streets at that time, to get by without interference.

A. As far as the street was concerned, it was. For a few minutes any one walking would have had a little difficulty.

Q. 28. State what happened on this occasion that you speak of, and tell what was responsible for the number of people gathered there at that time?

A. I came on the street about 1 o'clock. I had only been there a few minutes when Charter Shafer came up on my right; he was drinking and using terrible language; he accused me of not being 100% American; tore my magazine bag and shoved me off the curb; as fast as I got back up on the curb he pushed me back. He finally went to the doorway that leads to the office of the county superintendent of schools, and there he repeated the same language he had

used, and insisted again and again that I was not 100% American; that I should be put off the street; he stood there for a few minutes and offered a man standing nearby, $5.00 if he would put me off the street; the man didn't pay any attention to him. Charter came back toward me and repeated this terrible language. I told him to stand back. He went out in the middle of the street and there he met Lewis Reed. I was hearing all this myself, and he asked Mr. Reed if he would not see that I was put off the street. He seemed to think that Mr. Reed could put me off the street. Mr. Reed said, "I am a lawyer, I am not the law." Charter Shafer said, "I will kill her—the son of a bitch," and came back to the corner. He said, "You go back to Japan or Germany, where you belong." About that time my oldest son, Bill, stepped up; he had been standing behind me, but I didn't know it. Charter Shafer very slowly raised his [fol. 69] arm and struck my son. My son struck him and grappled with him, and held him down; his body was on the curb and his head was in the street. He held him down there for some time; no one seemed interested to the point of separating them. About that time when he had him down this small crowd gathered. I went on with my magazines. Finally a man named Sim Lamp, or a Mr. Sanders, I am not sure about it—anyhow somebody said hold Charter and I will take Bill off. They took Bill off and Charter left. The crowd thinned out; there were a few people standing around. No interference with the passage of people on the street. I was still working with my magazines. There were two girls there, standing close to me.

Q. 29. Who were the girls?

A. One was Mrs. Metz; one Verna Stull. Charter came back through and passed in front of me. He went on and in a little while came back and when he came back he walked right up to me, and struck me with his first on the left jaw; knocked me back, with my head on the curb. Charter ran across the street and these people picked me up and carried me in the store.

Q. 30. Did you ever make any complaint against him for that?

A. No.

Q. 31. Was it anything that you were doing or what Charter Shafer was doing which attracted the Crowd?

Counsel for plaintiff objects to the foregoing question because leading and otherwise improper.

[fol. 70] A. It was what Charter Shafer did that attracted the crowd.

Q. 32. Had any crowd gathered at any time as a result of your talking or presenting the publications of Jehovah's Witnesses?

A. No.

Q. 33. The only time that even a crowd of 25 persons gathered was on this occasion when Charter Shafer attacked you?

A. Yes.

Q. 34. And did you do anything to provoke him into that attack?

A. No.

Q. 35. Had you had any conversation with him before that?

A. No.

Counsel for plaintiff objects to the foregoing question and answer.

Q. 36. Had you presented him with any of this literature you were putting out?

A. No.

Q. 37. Did he say anything about having read any of it?

A. No.

Q. 38. Did he say anything about having heard anything you said?

A. No; we did not have any conversation at all.

Q. 39. Had he been drinking on that occasion?

A. I should say that he had.

Q. 40. Even at the height of the excitement, was there such a crowd that traffic was interfered with on the streets?

A. What do you mean by traffic?

Q. 41. Vehicles and people kept passing along the street.

[fol. 71] A. For a minute or two there might have been a little trouble to get along the sidewalk.

Q. 42. Do you hold any disrespect or disloyalty to the flag of the United States?

A. I do not.

Q. 43. Do you love your country?

A. I do; it is the best country on earth.

Q. 44. Do you love the flag?

A. I love what it stands for.

Q. 45. Do you love the flag itself?

A. Yes, because of what it stands for.

Q. 46. Do you believe in the Holy Bible?

A. I surely do.

Mr. Hamilton: We object to the foregoing questions and answers which do not relate to the issues joined, in the petition and answer in this cause.

Q. 47. Mrs. Mathews, have you argued with or had any dispute with any one on the streets concerning your religious beliefs, or the information set forth in these pamphlets which you present to the public for their acceptance or rejection?

A. No.

Q. 48. When the small group of approximately 25 people gathered on the occasion when this attack against you was made by Charter Shafer, was any effort made by the police or the sheriff to disburse the group?

A. No.

[fol. 72] Q. 49. Did anybody refuse or fail to leave on orders of the police or deputy sheriff?

A. No, sir.

Q. 50. Did any of the people in that group, other than Charter Shafer, indicate any hostility toward you or threaten you or offer to molest you?

A. No.

Q. 51. Have they done so at any later time?

A. No, sir; later in the evening I was told—I was not even present.

Q. 52. That would not be admissible.

Now, have you at any time made any statements to your knowledge that are in conflict with, or contrary to the statements made in the Bible?

A. No, sir.

Q. 53. Are any of the statements made in the publications of the Watch Tower Bible & Tract Society, distributed by Jehovah's Witnesses, contrary to the Bible?

A. No.

Q. 54. Do they undertake to teach any religious views other than set out in the Bible?

A. No.

Q. 55. Are any of these pamphlets, or any of the statements made by you either unpatriotic or treasonable?

A. No, sir.

Q. 56. Are any of these publications that you have offered to the public received by you through the United States Mail?

A. Yes; I might add that they have been thoroughly investigated by the F. B. I. and Mr. Biddle's office.

[fol. 73] Q. 57. And what was the result of their investigation?

A. That there was nothing at all that was treasonable or unpatriotic in any way shape or form.

Q. 58. Outside of this particular attack that you speak of, have other citizens of this town and county ever cursed, abused or threatened you?

A. No, sir.

Q. 59. Do you feel that you can travel the streets and highways of this town and county, with safety?

A. Yes sir.

Q. 60. Do you do so?

A. Every day and night.

Q. 61. I believe your husband owns a department store in the town of Grantsville?

A. Yes, sir.

Q. 62. And it is located at the corner where you worked and presented these publications?

A. Yes.

Q. 63. Has there been any loss of trade or business as the result of your activities on behalf of Jehovah's Witnesses?

A. No, sir.

Q. 64. Do you feel that you still enjoy the same respect in this town as heretofore?

A. Yes, sir; the people of this town respect any person who stands for a principle, whether they do the principle or not.

Q. 65. This matter that you speak of occurred on the 7th day of March, 1942, the date alleged in the bill, did it not?

A. Yes.

[fol. 74] Q. 66. Now, has the offering of this literature in the manner that you offered it, been any nuisance to the public?

Counsel for plaintiff objects to the foregoing question because calling for an opinion.

A. No, sir.

Q. 67. Did the offering of that literature constitute any irreparable injury or detriment to the people of Grantsville?

The foregoing question is objected to by counsel for plaintiff, because calling for the opinion of the witness.

A. No, sir.

Q. 68. Would it do any harm to the people of Grantsville and Calhoun county to teach them the Holy Scripture?

A. No; on the other hand it would be of lasting benefit.

Q. 69. Do you think that the public authorities of the county or town would have any difficulty in maintaining law and order, if you continued in that work?

A. I don't think so.

Q. 70. Do you think they are capable of enforcing the law if you continue that work?

A. Yes, sir.

Q. 71. Do you know of any instance in which the State Police have ever refused to assist if called upon?

A. No.

Q. 72. Do you think there is any danger of any grave or serious offenses resulting from you continuing in that work?

A. No.

Q. 73. Do you think it would affect adversely the public morale?

Counsel for plaintiff objects to the foregoing question and any answer thereto by the witness because leading and otherwise improper.

[fol. 75] A. No. May I state that on this occasion the state police was out of town and so was the city police.

Q. 74. Have you done anything to lower the morals of the people of the town of Grantsville, or Calhoun county?

A. No.

Q. 75. Have you in any way disturbed or interfered with the views and ability of the people of this city or county to aid the Government in the present emergency?

A. Absolutely not.

Q. 76. Would any harm or injury result to the people of this town, county and state if you continued in this work?

A. No, on the contrary, it would be the means of them obtaining everlasting life.

Q. 77. If you are prohibited from selling these magazines and publications, will that in any way lessen the commission of illegal acts in this county?

Counsel for plaintiff objects to the foregoing question, because leading, incompetent and irrelevant.

A. No.

Q. 78. Now, was Lavon Kelley with you at the time this group gathered?

A. No, sir; she was down the street.

Q. 79. Did any crowd gather where she was?

A. No.

Q. 80. Was she offering the same kind of literature to the public as you?

A. Yes.

[fol. 76] Q. 81. Was there anything in the literature she was offering that would be detrimental to the public in any way?

A. No.

Q. 82. Please explain just what you did do in the presentation of this literature and the teaching of the Bible?

A. I carry a magazine bag on my shoulder and take from that magazines of each kind; hold it up in my hand like this to the public; part of the time I would say "WATCHTOWER" and part of the time "CONSOLATION".

Q. 83. Did you bring any pressure to bear in the presentation of this literature?

A. No.

Q. 84. Did you get any commission for doing this work?

A. No.

Q. 85. What motive have you in doing this work?

Counsel for plaintiff objects to the foregoing question because irrelevant, immaterial and improper.

A. Matthew 24:14. "And this gospel of the Kingdom shall be preached in all the world for a witness unto all nations."

Q. 86. You carry on this work merely in obedience to God, is that right?

A. Yes.

Q. 87. Do you have the welfare and interest of the people of this town, county and state at heart in trying to bring them this message?

A. Yes, that is the sole reason, and obedience to Jehovah God's commandment.

Q. 88. If the people of this community lived according to God's precepts, would that be detrimental to them or the country?

A. It certainly would not be.

[fol. 77] Cross-examination.

Mr. Hamilton:

Q. 1. You have stated that Miss Kelley was not with you on March 7th, 1942, but was in another part of the street. How far away from you was she at that time?

A. She was down here just below Gibson's Store.

Q. 2. That would be something like 100 yards from where you were?

A. I don't know.

Q. 3. Then how do you know what she was teaching at that time or doing?

A. Because she was presenting the same literature that I was.

Q. 4. But you do not know what she was doing or saying?

A. No.

Q. 5. You have stated that the F. B. I. and Attorney General Biddle have investigated the magazines and literature used by Jehovah's Witnesses, and have approved them, insofar as the law is concerned, or words to that effect. Where do you get the information that leads you to make that statement, from the literature of Jehovah's Witnesses which you have spoken of?

A. I have a booklet put out by the Civil Liberties Union, which is the department under Mr. Biddle. He gave the invitation to the Watch Tower Bible & Tract Society to present their literature and it would be investigated, and upon that information and investigation this booklet was put out.

Q. 6. And your information about that comes from the literature distributed by you.

A. No.

[fol. 78] *A. No,* that booklet is put out by the Civil Liberties Union. I do not have that at hand.

Q. 7. But your information as to the result of that investigation comes from Jehovah's Witnesses' literature, does it not?

A. No, this booklet is the result of that investigation, and was put out by the Civil Liberties Union. We adopt this booklet from the outside.

Q. 8. You have stated that except for the occurrence of March 7, 1942, testified to by you, that there has been no commotion or trouble over the activities of the members of your organization. Is it not a fact that there was considerable commotion in the Calhoun County High School over your co-defendant Lavon Kelley, refusing to salute the flag of the United States in the school, and that the principal of the school Don McLaughlin, upheld her in that stand, and that as a result she did not receive her diploma, and the resignation of the Principal was requested and received by the Board of Education?

Counsel for defendant objects to the foregoing question and any answer thereto by the witness, because totally irrelevant to the issue involved in this case.

A. I cannot say that; I was not a witness to those things. I could not say exactly what happened at school.

Q. 8-a. Did you discuss the matter with Lavon Kelley?

A. Yes.

Q. 9. You don't know whether the Principal's resignation was so demanded and received, do you?

A. Except what was told to me and what I read in the papers.

[fol. 79] Q. 10. Is he still principal?

A. I should say he is not.

Q. 11. Do you know why he is not?

A. Because he was dismissed by the Board of Education.

Q. 12. Do you know why he was dismissed?

A. I know what he said, "in my defense."

Q. 13. Was it on account of the teachings of Jehovah's Witnesses?

A. No.

Q. 14. Do you mean to say that Jehovah's Witnesses' teachings had nothing to do with his dismissal?

A. They had not.

Q. 15. You have stated that it is not true as alleged in the bill that your organization does not teach that it is improper, wrongful and sinful to pay respect to the flag, by giving what is commonly known as the salute to the flag. Is that true?

A. I just don't get it.

Q. 16. Did you not say that you and your organization do not maintain, believe, say and claim that the salute to the flag should not be paid or given by you or by any other person?

A. There are two answers to that question:

Exodus 20:3,4,5

"Thou shalt have no other Gods before me. Thou shalt not make unto thee any graven image, or any likeness of anything that is in Heaven above, or that is in the earth beneath, or that is in the water under the earth. Thou shalt not bow down thyself to them or serve them, for I, the Lord thy God, am a jealous God, visiting the iniquities of the fathers upon the children, unto the third and fourth gen- [fol. 80] eration of them that hate me. And shewing mercy unto thousands of them that love me and keep my commandments."

Leviticus 26:1

"Ye shall make you no idols nor graven image; neither rear you up a standing image; neither shall ye set up any image of stone in your land to bow down unto it; for I am the Lord, your God."

That is a covenant of Jehovah's Witnesses. Any person who has not covenanted for the Kingdom as Jesus told us to believe, they are at perfect liberty to salute the flag and give the pledge of allegiance to this or any other country.

Q. 17. You and your organization then do believe and teach that it is improper and sinful and wrongful for you and the members of your organization to give salute to the flag?

A. Yes, sir.

Q. 18. And the literature so distributed by you as alleged in the bill also teaches that doctrine, does it not?

A. Yes, because that is what the Bible teaches.

Q. 19. I see you have two pamphlets or magazines with you, one called CONSOLATION and the other WATCH TOWER, both of which you referred to in your examination in chief. Will you file those two pamphlets or magazines with the stenographer as part of your evidence in this suit?

Mr. Meldahl:

We object to the filing of those as a part of the evidence because of making an unnecessarily long record. We

have no objection to leaving them with the court and letting the court examine them fully, but we don't want to make them part of the record, which may have to be transcribed and sent to the Supreme Court of Appeals.

[fol. 81] A. I will if you insist on having them; I would rather file my testimony card.

Mr. Meldahl: The defendant offers the magazines referred to for the court's examination, but refuses to make them a part of the record, as it would make the record too voluminous for the purpose of appeal.

Q. 20. Will you file them, marked for identification, "Defendants' Exhibit No. 1" and "Defendants' Exhibit No. 2"?

A. Yes.

To the filing of which defendants' counsel objects.

Mr. Meldahl: The foregoing papers are lodged with the record, instead of being filed.

Q. 21. I believe you have stated that you do not make a specific charge for the literature distributed by you and your organization, but do accept voluntary contributions for same. Is that right?

A. Yes.

Q. 22. How long have you been distributing this literature in the town of Grantsville?

A. Since the 20th of January, 1940.

Q. 23. And you have during that time taken the same to the places of business, offices of professional men, and private homes in the town of Grantsville, have you not?

A. Yes.

[fol. 82] Q. 24. How long have you been distributing this literature on the streets and public places of the town of Grantsville?

A. I take it you mean the magazines. Since October, 1941, to March 7, 1942.

Q. 25. Referring to the distribution of the magazines on the streets of Grantsville, have not crowds always gathered on the streets when you distributed them?

A. No.

Q. 26. I believe it is true that your distribution of the magazines or papers always occurred on Saturday, in the afternoons.

A. Yes.

Q. 27. And that continued, every Saturday afternoon from October, 1941, to and including March 7, 1942?

A. Yes, with the exception of a few days when the weather was so bad.

Q. 28. Did the crowd always seem to be friendly and well disposed toward your distributing the magazines, except on March 7, 1942, for the most part?

A. Yes.

Q. 29. You have stated that Charter Shafer was wholly responsible for the brawl that occurred on March 7, 1942. What caused him to be so responsible, if you know?

A. I don't know personally.

Q. 30. Was it not because you were distributing these magazines?

A. Well I had been distributing magazines since October, 1941.

[fol. 83] Q. 31. And he had never said anything before that time?

A. No, not that I know of.

Q. 32. Well, he did not commence to aggravate you in the manner you have testified to until after you commenced distributing these magazines on this particular day, did he?

A. Just that one day.

Q. 33. I don't believe you understand my question. I mean on that day he did not commence to do anything or say anything until you commenced distributing the magazines?

A. Not that I know of; I came straight from home.

Q. 34. He did not start to bother you until you commenced distributing the magazines, did he?

A. No.

Q. 35. I believe it is true that you and your co-defendant Lavon Kelley do refuse to salute the flag, and that such refusal is based upon the teachings of your religion, is that right?

A. Based upon the teachings of the Bible.

Q. 36. Well, in the first place, do you and Miss Kelley refuse to salute the flag?

A. Yes, sir.

Q. 37. And it is true, is it not, that your refusal is based upon the teachings of the Bible as interpreted by your religion?

A. The teachings of the Bible.

Q. 38. Well, your religion teaches the same belief?

A. It is the Bible; that is all there is to any of it.

[fol. 84] Q. 39. Does this organization known as Jehovah's Witnesses teach that it is improper, wrongful and sinful for its adherents to salute the flag?

A. It still goes back to the Bible. Nothing comes out in the Watch Tower except what is in the Bible first.

Q. 40. I am not asking you why your organization so teaches, but am asking you if it does?

A. Do you understand that there is not what you would commonly term an organization of Jehovah's Witnesses. The Watch Tower is incorporated under the laws of the United States, but Jehovah's Witnesses is not an organization with laws, etc.

Q. 41. Well, do Jehovah's Witnesses, organized or unorganized, teach that it is wrong, sinful and improper to salute the flag?

A. Why do you ask me that question again?

Q. 42. Is that your answer?

A. Yes.

Q. 43. And is it not a fact that the magazines and other literature distributed by you on the streets of Grantsville from October, 1941, to March 7, 1942, teach and maintain that it is improper, wrong and sinful to salute the flag?

A. No.

Q. 44. Do they teach that it is right to so salute?

A. It is every person's privilege. Jehovah's Witnesses do not interfere with any person who desires to salute the flag.

Q. 45. I am asking what the literature teaches to be right and wrong?

A. The literature teaches the Bible.

Q. 46. Does the literature, and do the magazines or not, teach that it is wrong to salute the flag?

A. Exodus 20 is the reason laid down by the Bible.

[fol. 85] Q. 47. That is all the answer you desire to give to that question?

A. That is all.

Redirect.

By Mr. Meldahl:

Q. 1. In answer to one of Mr. Hamilton's questions, you said that the people in the group about you, on the occasion mentioned, were friendly toward you for the most part.

Do you mean that any of them were unfriendly to you, other than this one man that attacked you?

A. Yes.

Q. 2. What persons, if any, were unfriendly to you and in what way did they show that?

A. Well at one time, Ike Snyder, who was standing on the street was unfriendly.

Q. 3. Any other person besides him?

A. Not any person that said anything to me.

Q. 4. Do you know of any other person who said anything?

A. I know of a man who told my husband—"You must not be mad at us for what we did to your wife."

Q. 5. Whom was he referring to when he said "Us"?

A. He was referring to the American Legion.

Q. 6. Did any of the members of the American Legion, or any other persons, do anything in the way of forming a mob or obstructing the streets or interfering with the carrying on of ordinary business in Grantsville or Calhoun County?

A. No.

[fol. 86] Q. 7. Is it saluting the flag, or violating the commandment of God, which Jehovah's Witnesses object to?

A. It is violating God's commandment.

Q. 8. It is merely to avoid being disobedient to Him?

A. Yes.

Q. 9. Did Jehovah's Witnesses, or any of them, originate the ten commandments, or any of these parts of the Bible that you refer to?

A. No.

Q. 10. Do the Watch Tower and Consolation stress those commandments, or any of them?

A. No; everything from Genesis to Revelation.

Q. 11. How often are any references made to this second commandment not to bow down to any graven image, in the Watch Tower?

A. Very, very seldom. Those things are not taken up unless some person asks a question, then they are referred to the Scripture.

Q. 12. Do Jehovah's Witnesses teach or determine any matters not taught in the Holy Bible?

Counsel for plaintiff objects to the foregoing question because, irrelevant, immaterial and improper.

A. No, sir. Absolutely not.

Q. 13. Do Jehovah's Witnesses support the laws of the United States, and conduct themselves as law abiding Christian citizens?

Counsel for plaintiff objects to the foregoing question because self serving.

A. At all times, yes.

[fol. 87] Recross.

By Mr. Hamilton:

Q. 1. As I understand your redirect examination, you mean to say that according to the beliefs and tenets and teachings of the Watch Tower, to salute the flag is bowing down to graven images?

A. Yes, sir.

Q. 2. And when you speak of people being friendly or unfriendly to you, I believe you meant to say "unfriendly to your belief", not unfriendly to you personally?

A. That is right, at all times.

Q. 3. You don't mean to testify that anyone was ever unfriendly to you except Mr. Shafer?

A. No.

Redirect.

Q. 1. You do not undertake to coerce any people to accept the views set forth in your magazines?

A. No, sir; we present this literature and if they are interested and there is any questions asked, we direct them to the Scripture.

And further this deponent saith not.

[fol. 88] Thereupon came Leone Metz, a witness of lawful age, who being first duly sworn upon oath, answered and deposed as follows:

By Mr. Meldahl:

Q. 1. State your name.

A. Leone Metz.

Q. 2. What is your husband's name?

A. Abe Metz.

Q. 3. Where do you live?

A. South Side, Grantsville.

Q. 4. How old are you?

A. 36.

Q. 5. How lond have you lived in this city?

A. I have lived around here all my life; was born in this county.

Q. 6. Were you in the town of Grantsville on March 7, 1942?

A. Yes.

Q. 7. Did you see any altercation on the streets on that occasion?

A. I saw Charter Shafer hit Mrs. Mathews.

Q. 8. Did she give him any provocation for hitting her?

A. No; she was standing talking to me; she fell in the back of the car against me.

Q. 9. Had you seen Charter Shafer before he came up and struck Mrs. Mathews?

A. Yes.

[fol. 89] Q. 10. How long before that?

A. When he and her boy got into it.

Q. 11. What had they been into?

A. I had just come to town when they were into it. Her boy had Charter down and was on top of him.

Q. 12. Did you see him throw him down?

A. No.

Q. 13. Was he doing any more than just restraining him?

A. Just holding him down.

Q. 14. What was done about Shafer getting up?

A. I don't know, some people parted them.

Q. 15. Did you hear any promise or agreement made by either of them?

A. I heard her boy say, "If you will let me alone, I will let you up," and he said he would.

Q. 16. What did Shafer do after that?

A. He went down the street and came back and walked up to her and hit her.

Q. 17. Did he warn her or show any sign that he was intending to strike her before he did strike her?

A. No.

Q. 18. Do you know of anything she said or had done that would warrant him doing that to her?

A. No.

Q. 19. Had Mrs. Mathews said anything to him about religion, or talked to him about the flag, or anything of that sort?

A. I never heard of anything.

[fol. 90] Cross-examination.

By Mr. Hamilton:

Q. 1. What was she doing when you first saw her?

A. Standing on the street, selling her books.

Q. 2. Many people around?

A. Quite a crowd.

Q. 3. A couple of hundred or so?

Counsel for defendants object to the foregoing question because witness has not stated how many people were there.

A. I don't know.

Q. 4. Some of them seemed to be mad?

A. Yes.

Q. 5. Were they making any threats?

A. No, just laughing about it. I did not stay very long.

Q. 6. You say some of them seemed to be mad?

A. Not particularly. I never paid much attention. I followed them into the store when they took her in.

Q. 7. I believe you came about the time Mrs. Mathews' son Bill and Charter Shafer were having trouble?

A. Yes, they were fighting.

Q. 8. And you stayed along with the rest of the crowd?

A. I stood talking to her; he knocked her down at my feet.

Q. 9. There was a great deal of excitement, was there not?

A. Yes.

Q. 10. There were a great many automobiles?

A. Yes.

Q. 11. Had you been down at any of the meetings Mrs. Mathews had before this time?

A. No.

[fols. 91-92] Q. 12. This was the first Saturday you were ever down there?

A. Yes.

Q. 13. How long did the crowd hang around there after they took Mrs. Mathews into the store?

A. They were hanging around when I went in the store.

Redirect.

Q. 1. You spoke of some people being mad. Were they mad at her or at Charter Shafer for hitting her?

A. I would not know; I did not talk to any of them.

Q. 2. You have no reason for thinking they were mad at Mrs. Mathews?

A. No, but I did not talk to them.

Recross.

Q. 1. It was just one big fracas wasn't it?

A. Yes.

And further this deponent saith not.

* * * * * * *

[fol. 93] Deposition of LaVaughn Kelly.

Direct examination.

By Mr. Meldahl:

Q. Your name is LaVaughn Kelly?

A. Yes, sir.

Q. How do you spell your name?

A. Capital L, small "a", capital V, a u g h n, Kelly.

Q. Are you the same LaVaughn Kelly that is mentioned in the style of this suit as Lavon Kelly?

A. I am.

Q. What is your age, Miss Kelly?

A. I am twenty-one.

Q. Where do you now reside?

A. Akron, Ohio.

Q. Have you removed to Akron, Ohio, permanently?

A. Yes, sir.

Q. When did you leave Grantsville, West Virginia?

[fol. 94] *A. Yes, sir.*

Q. When did you leave Grantsville?

A. On May 24th.

Q. And you have lived in Akron ever since?

A. Yes, sir.

Q. It has been stated in the plaintiff's depositions that you refused to salute the flag at the Grantsville High School when you were a student there. Will you state just what took place at the Grantsville High School?

A. *A.* Well, on February 3rd my senior room teacher, Mr. Vaughn, and the other senior room teacher Miss Stalnaker, read before the two classes combined the regulation passed by the Board of Education requiring students to salute the flag once each day. That was on February 3rd, Tuesday, and Miss Stalnaker, I remember hearing her say that we did not have a flag that day, but we would pretend having it, and the students recited the pledge, and I didn't say anything, and neither the students or the teacher said anything to me. I was not challenged in any way. And that was the only time that that regulation was carried out in my home room. On February 5, on Thursday, the Superintendent asked Mr. McGlothlin to dismiss me from school. On Friday Mr. McGlothlin called me into the office and told me that he had been asked to dismiss me, but that he had refused to do so. And that was the first I knew about that. And that same day Mr. McGlothlin presented and read an article stating why he refused to dismiss me.

Q. Now, that article you speak of has been introduced by [fol. 95] *by* Mrs. Mathews as part of her testimony, has it not?

A. Yes, sir, I believe so.

Q. When did the mid-year semester at the Grantsville High School end?

A. In January.

Q. Do you remember the date?

A. I think January 4th.

Q. Now at the end of the term did you have enough credits to entitle you to graduate?

A. I had 172½ hours.

Q. Was that in excess of the amount of hours necessary to entitle you to your diploma?

A. I was only supposed to have 150 hours.

Mr. Hamilton: All these questions and answers are objected to because the records of the school will show the facts.

Q. Was it necessary for you to remain at school that semester in order to be entitled to your diploma?

A. No, sir.

Q. Were you present and attending merely in order to obtain additional, and not required, credits?

A. Yes, sir.

Q. The bill of complaint, and the testimony so far taken by the plaintiffs, charges that you offered certain literature of Jehovah's Witnesses for sale on the streets of Grantsville at various times. Is that true?

A. We were not selling these, however we do ask for a contribution to further the publication, but what we receive [fol. 96] is not at all for our benefit.

Q. About how frequently did you offer that literature on the streets of Grantsville?

A. Once a week.

Q. From between what dates?

A. October until March.

Q. October 1941 until March 1942?

A. Yes, sir.

Q. Did you ever at any time have any crowds or numbers of people gather about you there on the sidewalk, or the street, that interfered with or impeded the usual traffic?

A. No, sir, I did not.

Q. Did you have any number of people that interfered with any persons passing on the sidewalk, or any vehicle passing in the street, which interfered with their doing so at any time you were offering literature?

A. No, sir.

Q. Did you ever offer to shed any one's blood, or do any one bodily harm, while you were on the streets and handling literature?

(Objected to.)

A. No, I wouldn't think of it.

Q. Do you love the flag of the United States?

(Objected to.)

A. I do.

Q. Do you love the United States?

(Objected to.)

[fol. 97] A. Yes, sir.

Q. Do you love the State of West Virginia?

(Objected to.)

A. I do.

Q. Where were you born?

A. Grantsville, West Virginia.

Q. Have you lived all your life in the United States?

A. Yes, sir.

Q. Do you feel any animosity towards any of the citizens or people of this community?

A. Just what do you mean by animosity?

Q. Ill feeling.

A. No, sir.

Q. After you were dismissed from the Grantsville High School, state what if anything occurred?

A. Well, I was not dismissed; I left school of my own accord.

Q. But were you told to get out, or anything of that kind?

A. No, sir; Mr. McGlothlin told me that I had sufficient credits for graduation, and I felt that was sufficient.

Q. Did he tell you that you would get your diploma?

A. Well, I should have.

Q. That was your impression?

A. Yes, sir, that was my impression.

Q. Was Mr. McGlothlin dismissed because he had refused to send you home?

A. I don't think so, as well as I remember.

[fol. 98] Q. Well, did he leave the High School here after that?

A. He left after I left school.

Q. And what did the students do, if anything, in protest?

(Objected to.)

A. Well, I was told they had a sit-down strike, but of course I was not there.

(Answer objected to.)

Q. How shortly after that was it that the High School burned?

A. It must have been the latter part of the month.

Q. Have you any idea at all what caused the fire?

(Objection.)

A. No, sir.

Q. Were you near enough to Mrs. Bessie Mathews on these occasions when you and she were offering literature on the streets of Grantsville to observe her conduct and demeanor?

A. I was not. I could not see her from where I worked.

Q. Were you in any way accosted or assaulted or challenged by any person while you were offering this literature?

A. No, sir.

Q. Did anybody ever offer any objections to your doing so?

A. If they did they didn't say anything to me.

Q. The situation, as far as you were concerned, was orderly at all times, was it?

A. Yes, sir.

Q. Did you conduct yourself lawfully and properly at all times?

[fol. 99] A. I tried to do so at all times.

Q. Well, so far, you succeeded?

A. Yes.

Cross-examination.

By Mr. Hamilton:

Q. Your religion or creed, Jehovah Witnesses, teaches that you should not salute the flag, does it not?

A. The Bible teaches that.

Q. What does your creed teach?

A. Everything that is in the Bible. It merely contains Bible statements.

Q. Then it does teach that you should not salute the flag?

A. It does not teach it—the Bible does.

Q. And if your creed teaches everything that the Bible teaches, of course it does teach that you should not salute the flag?

A. The Bible teaches it.

Q. Is that all the answer you have to make to my question?

A. Yes, sir.

Q. Then in conformity with the teachings of the Bible you refuse to salute the flag, is that true?

A. I am willing to obey God's law whatever that is. I do not salute any flag, because I am serving Jehovah, God.

Q. And you do refuse to salute the flag of the United States?

A. Any flag.

Q. And it was because of your refusal to salute the flag [fol. 100] that you did not continue your last semester term of the school, is that right?

A. No, sir.

Q. You did refuse to salute the flag, did you not?

A. No, I did not. I was not challenged.

Q. Did you salute the flag?

A. They did not have a flag in the room that day.

Q. Did you repeat the pledge given at the salute of the flag?

A. I did not say anything.

Q. And I believe you stated that because the High School principal would not make you give the salute, he was requested to resign, or was dismissed, is that right?

A. I did not say that he was dismissed for that reason.

Q. Well, he told you that he would not require you to salute the flag—that is true, isn't it?

A. He merely told me that I could avoid these assemblies if I desired to do so, that it was entirely up to me.

Q. He told you that you need not attend the assemblies when the salute to the flag was given, if you did not wish to do so?

A. He made that statement. But you must remember that salute was only given once, and there was no flag present then.

Q. Did you not make statements along about that time, and before that time, that you would not salute the flag?

A. To whom did I make the statements, may I ask?

Q. Read the question. (Question read to witness) [fols. 101-106] A. I had no occasion to make such statements. The regulation did not go into effect until February 3rd.

Q. That is all the answer you desire to make?

A. Yes, sir.

Re-direct examination.

By Mr. Meldahl:

Q. Are you willing to make the following pledge to the flag?

"I have pledged my unqualified allegiance and devotion to Jehovah, the Almighty God, and to his kingdom, for which Jesus commands all christians to pray; I respect the flag

of the United States, and acknowledge it as a symbol of freedom and justice to all; and I pledge allegiance and obedience to all the laws of the United States that are consistent with God's laws, as set forth in the Holy Bible."

A. I am willing to make that pledge.

And this was all the testimony of this witness.

* * * * * * *

(s) A. B. Moore, Official Shorthand Reporter.

[fol. 107] In Circuit Court of Calhoun County

State of West Virginia

vs.

Bessie Mathews and Lavon Kelley

Opinion

The bill of complaint in this cause alleges that the two defendants are members of a sect or religious organization known as Jehovah's Witnesses and as such have engaged for some period of time in preaching and teaching their doctrines by distributing literature upon the public streets and sidewalks of Grantsville in Calhoun county; that one of the doctrines held by the defendants is that it is wrongful and sinful to pay respect to the American Flag by any outward salute or other expression of the acknowledgment to the sovereignty of the government of the United States; that the defendants have made such use of the streets and sidewalks of said town as to block and impede traffic thereon and cause large crowds to congregate in such manner to create disturbances and lead to near riots in the center of the town; that on March 7, 1942 the acts and conduct of the defendants culminated in a street brawl upon the principal street in said town and otherwise resulted in a stoppage of traffic and congestion in and about the corner of Main and Williams streets intersecting with Court street; that the defendants believe, and teach upon the streets of said town, that the United States Flag should not be saluted by them nor any other person and that such conduct during the

present crisis approaches treasonable acts which should be enjoined and prohibited both on account of the danger to the defendants themselves and to prevent congestion upon the public streets of Grantsville, resulting in delay to traffic and normal function of business due to the collection of crowds expressing disapproval of the teachings of the defendants in public places.

A temporary injunction was granted by the judge of an- [fol. 108] other circuit prohibiting the defendants and each of them from distributing their literature upon the public streets of Grantsville and from orally teaching the doctrine set forth in said literature, until the further order of the Circuit Court of Calhoun county.

The defendants appeared and filed their answer setting forth certain beliefs held by them justifying their acts and denying they were responsible for street brawls or that they impeded or delayed traffic upon the public streets or highways. The answer may be more strictly defined as a treatise upon the justification of the religious beliefs of the two defendants rather than a pleading in an equity suit.

Evidence was taken by the defendants before that for the plaintiff was taken but the cause was submitted upon the pleadings, motions and depositions filed on behalf of both parties to the cause.

The argument advanced by the defendants is that they are engaged in the practice of religious freedom and that the result of their distribution of literature upon the streets of Grantsville is due to the opposition among the people to their religious faith and not to any illegal or unlawful act committed by them. At the outset it is granted that both defendants may believe in any religious doctrine and teaching which satisfied their own conscience and that both of them have the right under the law of our country to practice their religious inclinations in any reasonable manner acceptable to them. This is one of the great liberties of American Democracy so well planted that no opposition save an avalanche will destroy it. In fact we are now at war with demons of the earth to preserve this privilege.

But even the greatest of freedoms is surrounded with limitations. In other words an absolute freedom is rare even in a Democracy. For example we boast of freedom of speech, possessed by us in great measure, but there is a limitation to that freedom which prevents abuse and beyond

which there is a liability both in the criminal and civil law. In other words the great freedoms about which we boast [fol. 109] are relative in their character and measured, by accepted standards under broad principles of public policy. It would not be contended for a moment that either the priest or the parson could assemble their respective congregations upon a public thoroughfare and hold religious services, however laudable they might be, in total disregard of the rights of the public to have and use such public ways for travel and commerce. Here again is a limitation upon a precious liberty.

In reviewing the record in this case an amazing situation is revealed in the testimony of the defendant Bessie Mathews. On page 17 of the testimony filed on behalf of the defendants, counsel for the plaintiff propounded to her the following question:

Q. 17. "You and your organization then do believe and teach that it is improper and sinful and wrongful for you and the members of your organization to give salute to the flag?" To this she answered, "Yes, sir." Then counsel propounded the further question; "And the literature so distributed by you as alleged in the bill also teaches that doctrine, does it not?" To this question she answered; "Yes, because that is what the Bible teaches." From this testimony it is not difficult to understand that the defendants have passed from the stage of believing that the flag should not be saluted but were upon the public streets distributing literature to gather support to their view. Hence, it at once appears that freedom to believe as you please is translated into action to encourage others to adopt the same notions. Again it must be submitted that there is no law in this state prohibiting any citizen from entertaining any belief he may adopt but he may not have the right to openly proclaim his beliefs in public places. In other words Jehovah's Witnesses may believe it sinful and improper to salute the flag of our country but they have no right to create disrespect for it upon the part of others. This very question has given rise to many controversies and resulted in many judicial decisions throughout the entire country not in harmony with each other. These decisions concern largely statutes and regulations requiring salutes to the flag in public schools. Even the Supreme Court of the United States is in a doubtful position upon this matter al-

[fol. 110] though several cases have been presented and decided by it.

The present case does not relate to requiring salutes, it involves a much broader question. Do the defendants have the right to go about the streets teaching orally and by distributing literature that it is sinful and wrongful to salute the American Flag? If so, this same right is possessed by every person in the land. Can we say that such conduct may be protected and shielded under the cloak of religious freedom? If an act is unlawful or illegal it does not become legal because practiced by a member of a religious order. The right to believe a thing does not carry with it the right to proclaim and publish that belief without engendering the wrath of the law.

A provision of the West Virginia Code, Chapter 61, article 1, section 8, among other things provides: "Any person * * * who shall publicly mutilate, deface, defile or defy, trample upon or cast contempt, either by words or acts upon any such flag * * * shall be guilty of a misdemeanor * * *. This provision indicates the policy of the state with respect to casting contempt by words or acts upon our flag. There can be no doubt that refusal to salute the flag does not confer the privilege of persuading others to hold it in contempt.

My conclusion of this whole matter is that the defendants have no right to use public streets to teach disrespect for the American Flag. This they have done by the admissions of one of them. Not only this but according to numerous witnesses in the cause traffic has been impeded, hindered and delayed upon a state highway because the defendants were there selling and distributing their literature. No organization possesses this right over the objection of the state. Of course the defendants have the right to sell and distribute free unobjectionable literature, subject to reasonable regulations, but it is unreasonable to believe [fol. 111] that the literature distributed by them does not offend against the policy of this state. As long as the literature is confined to religious subjects there is no just cause of complaint, but teaching disrespect for the flag is not a religious duty.

At the present time we are engaged in a great world conflict. Notice is taken of the fact that thousands of men and many women are now engaged in this unparalleled struggle

to preserve certain freedoms long cherished by the American people and other civilized nations of the world. Must we submit to practices on the home front which tend to create disrespect for the government whose protection we enjoy? May it be said of us that while our men fight abroad to preserve our country we permit conduct at home calculated to weaken, if not destroy, the very liberties they seek to preserve? In an emergency such as this we cannot and we must not temporize with any conduct tending to disorganize or destroy our unity. Contempt for the American Flag is such an act—all teaching designed to foster or promote such contempt should and must be suppressed.

An injunction will be perpetuated preventing these practices upon the part of the defendants.

(s) L. H. Miller, Judge 5th Judicial Circuit, West Virginia.

[fol. 112] In Circuit Court of Calhoun County

State of West Virginia, at the relation of Lorentz C. Hamilton, Prosecuting Attorney of Calhoun County, West Virginia,

against

Bessie Mathews and Lavon Kelley

In Chancery

Final Decree—November 16, 1942

This cause came on this day to be heard upon the plaintiff's bill and exhibits therewith filed, process to answer said bill having been duly and legally served upon the said defendants more than thirty days prior to this date, to-wit, on the 14th. day of March, 1942, cause regularly proceeded in and set for hearing at the Rules, upon the joint replication to said answer, upon the depositions of witnesses duly taken, subscribed, sworn to and filed on behalf of the plaintiff and the said defendants, and was argued by Counsel.

Upon consideration whereof, the Court is of the opinion that the said plaintiff is entitled to the relief prayed for in its said bill, which opinion has been given in writing and duly filed herein, and it is adjudged, ordered and decreed accordingly.

It is therefore adjudged, ordered and decreed that the injunction, heretofore awarded temporarily by the Honorable S. O. Prunty, Judge of the Third Judicial Circuit of this state, be and the same is hereby perpetuated, and that the said defendants, Bessie Mathews and Lavon Kelley, be and they are hereby perpetually injoined, restrained and inhibited from selling, distributing and circulating the books, pamphlets, magazines and other papers, in the bill and proceedings herein fully mentioned and described in and upon the public places of Calhoun county and from orally teaching, preaching and maintaining the tenets and creeds, fully [fol. 113] set forth and described in the said bill and proceedings, in and upon said public places in said county.

It is further adjudged, ordered and decreed that the said defendants do pay to the plaintiff all its costs about its suit in this behalf expended, including a statutory docket fee of twenty dollars.

Upon motion of the plaintiff, it is further adjudged, ordered and decreed that the Court's said written opinion, so filed herein, be and the same is hereby made a part of the record in this suit.

And this cause being ended, it is ordered that the same be stricken from the docket.

[File endorsement omitted.]

[fol. 114] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 115] IN THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

STATE ex rel LAURENTZ C. HAMILTON, etc.

vs.

BESSIE MATHEWS, et al.

ORDER REFUSING APPEAL—February 8, 1943

On a former day, to-wit, January 19th, 1943, came the petitioners, Bessie Mathews and Lavon Kelley, by Horace S. Meldahl, their attorney, and presented to the Court a petition praying for an appeal from a decree of the Circuit Court of Calhoun County pronounced in this cause on the

16th day of November, 1942, with the record therein accompanying the petition, which being seen and inspected by the Court, the appeal prayed for is refused.

[fol. 116] [File endorsements omitted]

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

[Title omitted]

PETITION OF DEFENDANTS FOR APPEAL AND SUPERSEDEAS—Filed January 19, 1943, February 9, 1943 and March 9, 1943

To the Honorable Fred L. Fox, President, Jo N. Kenna, William T. Lovins, James B. Riley, Hershel H. Rose, Judges of the Supreme Court of Appeals of West Virginia.

The undersigned defendants, Bessie Mathews and Lavon Kelley, say they are aggrieved by a certain decree entered on the 16th day of November, 1942, by the Circuit Court of Calhoun County, West Virginia, making permanent and perpetual a temporary injunction previously granted by the Honorable S. O. Prunty, Judge of the Third Judicial Circuit of West Virginia, and ask that said decree be set aside and reversed as contrary to the evidence and the law, and that said injunction be dissolved.

[fol. 117] BRIEF STATEMENT OF THE CASE

The bill of complaint alleges that the defendants are Jehovah's Witnesses, that one of the creeds of such organization is "that it is improper, wrongful, and sinful to pay any respect or honor to the flag of the United States," and especially that it is wrongful and sinful to pay that respect, honor and obeisance to the flag which is commonly known as a salute; that the organization of Jehovah's Witnesses publishes books, pamphlets, magazines, and papers which are sold, distributed, and mailed throughout the country both in private homes and public places, one of which publication is called the Consolation; that the defendants for several months preceding the institution of this suit had been continuously selling, distributing, and circularizing said books,

pamphlets, magazines, and papers upon the highways, streets, and alleys of Grantsville and Calhoun County; that the defendants maintained such tenets upon said streets orally and by distributing said publications; that as a consequence crowds gathered around the defendants in such public places which resulted in quarrels, disputes, and arguments concerning such tenets and beliefs; that such crowds interfered with traffic; that such acts of the defendants constituted unpatriotic and *treasonable acts* and provoked quarrels, threats, cursing, brawling, fights, and near riots, and constituted a public nuisance resulting in irreparable mischief, injury, and damages, and unless stopped by injunc-
[fol. 118] tion, grave offenses would result, affecting the rights, morals, privileges, security and morale of the public generally and injuring the peace, unity, and security of the community and public generally; *that the said defendants have not been guilty of any crime against the state or town, and that said acts are not crimes per se; and that no criminal statutes of the state of West Virginia or criminal ordinances of the town of Grantsville have been violated; and that the plaintiff is without relief in the courts of the common law,* and therefore without remedy except by injunctions to stop the distributing and circularizing of said publications and orally teaching and preaching and maintaining said tenets, creeds, and perverted beliefs in and upon said public places mentioned in the said bill of complaint.

Demurrer

The defendants promptly demurred to said bill of complaint on the ground that it expressly averred that no unlawful acts had been committed, that such acts as the plaintiff complained of if true could be abated by criminal processes; that the acts of others complained of were not chargeable to the defendants and that the innocent should not be enjoined for wrongful acts of which others might be guilty, and that no statements claimed to be unlawful or improper alleged to be contained in said publication were
[fol. 119] either specifically set forth or proved in any manner.

Motion to Dissolve

The defendants also moved the court to dissolve the temporary injunction on the grounds that it was improperly awarded; that no proper cause for injunctive relief was set

BEST COPY AVAILABLE

PUBLISHER'S NOTICE

Material on the following frames is
the best copy available to publisher.

up in the bill of complaint, and that the facts alleged and charged to the defendants were not supported by *an* proper proof, that the bill alleged that they were not guilty of violating any law, and that the improper acts set forth in the bill of complaint were charged to others rather than the defendants.

Action of the Court

Said demurrer and motion were overruled. The defendants thereupon filed their answer to the bill of complaint, which denied specifically every material allegation thereof, and when the plaintiff appeared disinclined to take depositions, the defendants proceeded to do so. Afterwards the plaintiff took some testimony, and this was followed by additional testimony offered by the defendants, all of same being written up and submitted to the court orally and sub- [fol. 120] mitted on the depositions at the August term, 1942, but the court withheld its decision thereon until the November term and then it was finally rendered, said decision and the decree thereon making permanent and perpetual the temporary injunction theretofore granted.

The Facts as Disclosed by the Evidence

The evidence shows none of the difficulties mentioned in the bill of complaint ever arose, in so far as the defendant Lavon Kelley, was concerned; and that in so far as the defendants, Bessie Mathews, was concerned, the only incident which arose during the several months the bill of complaint mentions or occurred at any time, was on or about March 7, 1942, at which time she was peacefully standing at the curb in front of her husband's department store when one Charter Shafer, who was drunk or very much intoxicated, passed freely between Mrs. Mathews and her store without any interference of anyone, and approached a man standing in a doorway beyond, whom he asked to do something to stop Mrs. Mathews. Upon being told that there was nothing the man could rightfully do to stop her the said Charter Shafer then passed again freely between the said Mrs. Mathews and her store, as Louis Reed, an attorney of Grantsville, had done a moment before, and called loudly to the said Louis Reed, who by that time had reached the middle of the street intersection and who thereupon stopped [fol. 121] and waited to see what the said Charter Shafer wanted. As the said Charter Shafer approached said Louis

Reed he continued to call loudly for the said Reed to do something to stop Mrs. Mathews and to tell the said Shafer what could be done. That said Reed replied that he had no authority as an attorney to stop her, and that he did not know of any means of stopping her lawfully as he believed she had a right to do what she was doing, or words of similar import. Whereupon the said Charter Shafer returned and as he again passed between Mrs. Mathews and her store he grabbed the Consolations out of her hands and twisted and tore them up with his hands and threw them upon the sidewalk. He then went to where some persons were standing in front of a doorway beyond and offered one of them five dollars to put Mrs. Mathews off the street. When this offer was declined the said Charter Shafer returned to where Mrs. Mathews was still peaceably and quietly standing, and without any words with her, struck her with his fist on her fac*t* and knocked her down into the gutter. In falling she went against another woman who had stopped because of the loud talking and misconduct of the said Charter Shafer and then against an automobile bumper, the former checking her fall, but nevertheless being severely injured by it. No police, troopers, sheriffs, constables or other authorities arrived to quell the misconduct of the said Charter Shafer, the trouble [fol. 122] having arisen so suddenly and unexpectedly, and most of said officers being at the time out of town, but on seeing his mother attacked twenty year old Billy Mathews went to his mother's rescue, took hold of the said Charter Shafer, more than twice his age and twice his weight, and put him quickly on the ground. As soon as the said assailant promised to behave young Mathews let him up, which ended the matter. A substantial number of people were attracted by the incident, estimated by the various witnesses from fifty to about three hundred, though most of them placed the number around one hundred and fifty to two hundred persons. All of these quickly dispersed after the incident was over, the entire matter having taken place in a very few moments. There was no proof that traffic had been stopped even for that short time, and the evidence showed beyond a reasonable doubt that the entire situation was due to the unlawful and improper acts of the said Charter Shafer, and not to anything done by Mrs. Mathews. It is indeed strange and peculiar that the said

Charter Shafer was never prosecuted for his open and unprovoked assault. There was an intimation in the evidence that said Charter Shafer's atrocious and criminal conduct was prompted because principal Don McGlothlin of the Grantsville High School had refused to expel LaVon Kelley when she failed to salute the flag *that wasn't there.* [fol. 123] In regard to this the evidence shows that LaVon Kelley had not refused to salute the flag, and that she voluntarily withdrew from school rather than cause trouble to the principal, since she had completed during the previous semester all the credits and conditions requisite for her diploma, but which the board of education subsequently refused to grant, even after the flag salute requirement had been held unconstitutional by a three judge Federal District Court. Principal McGlothlin preferred to resign his position and join the navy rather than do an unAmerican and unlawful act in expelling said student defendant. The students of the high school then staged a strike in protest of the school board's action, and a few days later the High School building burned to the ground from accidental fire, which some people at first suspected might have been deliberately started, but no one ever suspected either of the defendants herein as having had anything to do with.

The Court's Opinion

With the decree of the Court was rendered a written opinion, which states that the decision is based upon a certain West Virginia statute making it a misdemeanor to publicly "mutilate, deface, defile or defy, trample upon or cast contempt, either by words or acts" upon any such [fol. 124] flag, and a misapplication of the admission of the defendant Bessie Mathews that Jehovah's Witnesses teach the Bible, including that part of it which is contained in the First Commandment, which says, "Thou shalt not make unto thee any graven image, or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth; thou shalt not bow down thyself to them, nor serve them: for I the Lord thy God am a jealous God, visiting the iniquity of the fathers upon the children unto the third and fourth generation of them that hate me; and showing mercy unto thousands of them that love me, and keep my commandments," Exodus 20:3-6, and that Jehovah's said commandment includes saluting any flag of any nation in its meaning.

Nothing in the lower Court's opinion was based upon a true interpretation of the defendants' testimony, nor did it regard that testimony as a whole. The defendants both testified that they loved the flag and what it stands for, liberty and freedom, and meant no disrespect for the flag in obeying God's command, or in telling others of it and what they believe to be the true and correct interpretation of it. The court's opinion ignores the practice of the Salvation Army's services with a band, singing and preaching in the street which admittedly was not objectionable. The opinion shows misconstruction of the evidence and misapplication of it.

[fol. 125] ASSIGNMENT OF ERRORS

1. That the court erred in allowing equitable relief when an adequate remedy at law existed.
2. That the court erred in granting an injunction to stop acts which the bill of complaint averred was not unlawful.
3. That the court erred in entertaining the bill of complaint when no cause for equitable relief was shown upon its face.
4. That the court erred in not sustaining the demurrer thereto.
5. That the court erred in not sustaining the motion to dismiss.
6. That the court erred in not sustaining the motion to dissolve the temporary injunction.
7. That the findings of the court are contrary to the evidence.
8. That the decree of the court is not supported by either the bill of complaint or the evidence.
9. That the action of the court is without warrant in law.
10. That the court erred in not dismissing the bill of complaint.
11. That the court erred in not dissolving the injunction.
12. That the court erred in denying by its decision the freedom of speech, freedom of the press, and freedom of [fol. 126] religion guaranteed by the Constitution of the State of West Virginia and the Constitution of the United States of America.

PRAYER

Your petitioners, said defendants, therefore pray that this Honorable Court will grant an appeal from the said

decree of the Circuit Court of Calhoun County; that upon due consideration thereof that the bill of complaint may be dismissed; that the injunction heretofore granted and made perpetual and permanent may be dissolved; that these appellants may be awarded their costs in this behalf expended, including attorney's fees; and that they may be given such other and further relief as to this Honorable Court may seem meet, and as in duty bound, will ever pray, etc.

Lavon Kelley, by Counsel. Bessie Mathews, by Counsel. (Signed) Horace S. Meldahl, Counsel for Appellants.

[fol. 127] In Supreme Court of Appeals of West Virginia

[Title omitted]

Order Refusing Second Application for Appeal—March 1, 1943

On a former day, to-wit, February 27th, 1943, came again the petitioners, Bessie Mathews and Lavon Kelley, by Horace S. Meldahl, their attorney, and presented to the Court a petition praying for an appeal from a decree of the Circuit Court of Calhoun County pronounced in this cause on the 16th day of November, 1942, with the record therein accompanying the petition, which being seen and inspected by the Court, the appeal prayed for is refused on this the second application.

[fol. 128] In Supreme Court of Appeals of West Virginia

[Title omitted]

Order Refusing Third Application for Appeal—March 15, 1943

On a former day, to-wit, March 9th, 1943, came again the petitioners, Bessie Mathews and Lavon Kelley, by Horace S. Meldahl, their attorney, and presented to the Court a petition praying for an appeal from a decree of the Circuit Court of Calhoun County pronounced in this cause on the 16th day of November, 1942, with the record therein ac-

companying the petition, which being seen and inspected by the Court, the appeal prayed for is refused on the ground that the decree complained of is plainly right, on this the third application.

[fol. 129] IN SUPREME COURT OF APPEALS OF WEST VIRGINIA

[Title omitted]

ORDER STAYING EXECUTION—March 18, 1943

On a former day, to-wit, March 17th, 1943, came the petitioners, Bessie Mathews and Lavon Kelley, by Horace S. Meldahl, their attorney, and moved the Court to stay the order of this Court entered herein on March 15, 1943, pending an application to the Supreme Court of the United States for an appeal or certiorari in this cause pursuant to the provisions of Code 58-5-31. Upon consideration whereof, it is ordered that the execution of the order of this Court be, and it is hereby, suspended for a period of ninety days from March 15th, 1943, in order to permit the petitioners to apply to the Supreme Court of the United States for an appeal or certiorari herein. Bond required in the penalty of five hundred dollars and conditioned according to law.

[fol. 130] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 131] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. —

[Title omitted]

STIPULATION AS TO RECORD

It is hereby stipulated by and between the parties through their respective counsel that all exhibits entered into the evidence in the trial court below, be omitted from the printed record of the case before the Supreme Court of the

United States, and in lieu thereof that the original exhibits and duplicates thereof, be filed with the court.

This Eighteenth day of May, 1943.

Hayden C. Covington, Counsel for Petitioners. Lorentz T. Hamilton, Counsel for Respondent.

[fol. 132] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. —

BESSIE MATHEWS and LAVON KELLEY, Petitioners,

vs.

STATE OF WEST VIRGINIA ex rel LORENTZ HAMILTON

ORDER EXTENDING TIME WITHIN WHICH TO FILE PETITION FOR CERTIORARI—May 21, 1943

Upon consideration of the application of counsel for the petitioners,

It is ordered that the time for filing petition for certiorari in the above-entitled cause be, and the same is hereby, extended to and including July 15th, 1943. Without at this time passing on the question whether application for this extension is timely.

Harlan Stone, Chief Justice of the United States.

Dated this 21st day of May, 1943.

FILE COPY

Office - Supreme Court, U. S.
FILED
JUL 12 1943
CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1943

No. 155

■

BESSIE MATHEWS and LAVON KELLEY
Petitioners
v.
STATE OF WEST VIRGINIA, EX REL.
LORENTZ C. HAMILTON,
Prosecuting Attorney of Calhoun County
Respondent

■

Petition for Writ of Certiorari to the Circuit Court of Calhoun County of the State of West Virginia

HAYDEN C. COVINGTON
Attorney for Petitioners

INDEX

Subject Index

	PAGE
Summary Statement of Matters Involved	1-15
Statutory Provision Sustaining Jurisdiction	1
Validity of State Law Drawn in Question	1
Date of Judgment and Order to be Reviewed	3
Circuit Court Highest Court in which a Decision Could be Had	6
Time and Manner in Which Questions Raised Below	7
Opinions of the Courts Below	8
Statement of Facts	8
Bill of Complaint and Findings of Court	11
Questions Presented	15
Reasons Relied on for Allowance of Writ	15
SUPPORTING BRIEF	17
Specification of Errors	17
ARGUMENT	18
Conclusion	25

Cases Cited

Andrew v. Virginian Ry. Co. 248 U. S. 272	7
Blumberg v. Snyder 90 W. Va. 145	3

Cases Cited

PAGE

Cantwell v. Connecticut
310 U. S. 296 ..... 16, 19, 21
Carlson v. California
310 U. S. 106 16
City Bank of Michigan City v. Opperman
249 U. S. 448, 450 6
Dearborn Publishing Co. v. Fitzgerald
271 F. 479 22
Department of Banking v. Pink
.... U. S. ...., 63 S. Ct. 233
(No. 466 October Term 1942) 5
Gorman v. Washington University
316 U. S. 98, 101 4
Gypsy Oil Co. v. Escoe
275 U. S. 498 6
Jamison v. Texas
.... U. S. ...., 63 S. Ct. 669 19
Jones v. Opelika
.... U. S. ...., 63 S. Ct. 890 19
Kanawha & M. Ry. Co. v. Kerse
239 U. S. 576, 578 7
Largent v. Texas
.... U. S. ...., 63 S. Ct. 667 19
Lovell v. Griffin
303 U. S. 444 19
Martin v. Struthers
.... U. S. ...., 63 S. Ct. 862 19
Milk Wagon Drivers Union v. Meadowmoor Dairies
312 U. S. 287, 293-299 ..... 16, 24
Moore v. Johnson
24 W. Va. 549 4
Murdock v. Commonwealth of Pennsylvania
.... U. S. ...., 63 S. Ct. 870 ..... 19, 21
Near v. Minnesota
283 U. S. 697, 721-722 ..... 16, 23

Cases Cited

PAGE

Osment v. Pitcairn
.... U. S. ...., 63 S. Ct. 21 4
People v. Downer
6 N. Y. S. 2d 566 22
Schneider v. State of New Jersey
308 U. S. 147 19
Taylor v. Mississippi
.... U. S. ...., 63 S. Ct. 1200 ..... 16, 19, 20
Tenner v. Dullea
314 U. S. 692 4
Thornhill v. Alabama
310 U. S. 88 16
Truslow v. Payne
90 W. Va. 149 4
Virginia Railway Co. v. Mullins
271 U. S. 220 7
West Virginia v. Corbin
117 W. Va. 241, 243 4
West Virginia State Board of Education v.
Barnette et al.
.... U. S. ...., 63 S. Ct. 1178 ..... 16, 19
Williams v. Irvin
101 W. Va. 708 4
Zimmerman v. United States
298 U. S. 167 6

Statutes Cited

Judicial Code of the United States
Section 237 (b) 7, 25
United States Constitution
First Amendment 15, 18, 19
Fourteenth Amendment 15, 18, 19
West Virginia Code
Article 5, section 4 4

Statutes Cited

	PAGE
Article 5, section 9	3
West Virginia Code, Annotated	
Section 5795	3
Section 5811	4

Miscellaneous Citations

ALMIGHTY GOD, Word of [The Bible]:	
Exodus 20:3-5	19
Isaiah 61:2	19
Matthew 24:14	19
Mark 13:10	19
Madison's Works, *Report on the Virginia Resolution*	
Volume IV, pages 543, 549	23
Supreme Court of the United States, Rules of	
Rule 38, par. 5	25

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1943

No.

■

BESSIE MATHEWS AND LAVON KELLEY
Petitioners
v.
STATE OF WEST VIRGINIA, EX. REL.
LORENTZ C. HAMILTON,
PROSECUTING ATTORNEY OF CALHOUN COUNTY

■

Petition for Writ of Certiorari to the Circuit Court of Calhoun County of the State of West Virginia

To the SUPREME COURT OF THE UNITED STATES:

Bessie Mathews and Lavon Kelley, petitioners, present this their petition for writ of certiorari and show unto the Supreme Court as follows:

A

Summary Statement of Matters Involved

1. *Statutory Provision Sustaining Jurisdiction.*

Section 237(b) of the Judicial Code [28 U. S. C. A. 344(b)] sustains jurisdiction of this Court.

2. *Validity of State Law Drawn in Question.*

Neither a state statute nor an ordinance of a municipality is involved in this case. There is presented for review

a decree of the Circuit Court granting an injunction restraining petitioners from distributing the *Watchtower* and *Consolation* magazines and other Biblical literature upon the streets of Grantsville, West Virginia, and from orally teaching, preaching and maintaining the beliefs of Jehovah's witnesses publicly. The decree reads as follows:

> "This cause came on this day to be heard upon the plaintiff's bill and exhibits therewith filed, process to answer said bill having been duly and legally served upon the said defendants more than thirty days prior to this date, to-wit, on the 14th day of March, 1942, cause regularly proceeded in and set for hearing at the Rules, upon the joint replication to said answer, upon the depositions of witnesses duly taken, subscribed, sworn to and filed on behalf of the plaintiff and the said defendants, and was argued by Counsel.
>
> "Upon consideration whereof, the Court is of the opinion that the said plaintiff is entitled to the relief prayed for in its said bill, which opinion has been given in writing and duly filed herein, and it is adjudged, ordered and decreed accordingly.
>
> "It is therefore adjudged, ordered and decreed that the injunction, heretofore awarded temporarily by the Honorable S. O. Prunty, Judge of the Third Judicial Circuit of this state, be and the same is hereby perpetuated, and that the said defendants, Bessie Mathews and Lavon Kelley, be and they are hereby perpetually injoined, restrained and inhibited from selling, distributing and circulating the books, pamphlets, magazines and other papers, in the bill and proceedings herein fully mentioned and described in and upon the public places of Calhoun county and from orally teaching, preaching and maintaining the tenets and creeds, fully set forth and described in the said bill and proceedings, in and upon said public places in said county.

"It is further adjudged, ordered and decreed that the said defendants do pay to the plaintiff all its costs about its suit in this behalf expended, including a statutory docket fee of twenty dollars.

"Upon motion of the plaintiff, it is further adjudged, ordered and decreed that the Court's said written opinion, so filed herein, be and the same is hereby made a part of the record in this suit.

"And this cause being ended, it is ordered that the same be stricken from the docket." R. 86-87.

3. *Date of Judgment and Order to be Reviewed.*

The decree perpetually enjoining petitioners from distributing literature upon the streets of the city of Grantsville was entered upon November 16, 1942. (R. 86) The decree became final on March 15, 1943, on which date the Supreme Court of Appeals of West Virginia refused petitioner's third application for appeal. The appellate court for the first time refused the application because "the decree complained of is plainly right". (R. 94-96) The first application for appeal was refused on February 8, 1943. (R. 87-88) A second application for appeal was refused by the Supreme Court of Appeals of West Virginia on March 1, 1943. (R. 94) These two applications for leave to appeal did not make the decree of November 16, 1942, final under the procedure of the State of West Virginia.[1]

In the case of *Blumberg* v. *Snyder,* 90 W. Va. 145, 148-149, the Supreme Court of Appeals of West Virginia said:

"The appellate jurisdiction of this court in civil matters is limited. . . . A refusal to grant the prayer of a petition in error is ordinarily not final; within the

[1] "In a case wherein the court shall deem the judgment, decree or order complained of plainly right, and reject it on that ground, no other petition therein shall afterwards be entertained. But the rejection of such petition by a judge in vacation shall not prevent the presentation of such petition to the court when in session."—Sec. 5795 of West Virginia Code Anno. [Art. 5, Sec. 9 of West Virginia Code (1931)]

statutory time allowed, for appeal or error, the petition may be again presented. It is reasonable to suppose that a court once having refused error would not likely consider another application. But there would be nothing to prevent. The term of the judge so refusing may end and his successor inducted into office before limitation of time for error. His action on another application may grant the writ. The statute quoted makes the order refusing error final when the judge deems the judgment or order of the Court of Common Pleas plainly right, and so states, and in terms prescribes that no further petition shall afterwards be presented for the same purpose. . . . It may be observed that refusal of application to this court for appeal or error is not final, and the application may be renewed before limitation expires unless the court deems the judgment, decree or order complained of plainly right and rejects it on that ground. Chap. 135, Sec. 11, Code."[2]

The West Virginia Code provides that the time limitation for appeal or error from the Circuit Court to the Supreme Court of Appeals of West Virginia is eight months.[3] The practice required the petition to be renewed or else wait until expiration of the eight months' limitation period before it became final.

This Court requires a litigant to exhaust all possible remedies in the appellate machinery of the state courts before applying to this Court for relief.[4] A remedy remained open during the eight-month period to make subsequent applications until the decree was declared to be plainly right.

---

[2] 2 *Williams* v. *Irvin*, 101 W. Va. 708; *Moore* v. *Johnson*, 24 W. Va. 549; *Truslow* v. *Payne*, 90 W. Va. 149; *State of West Virginia* v. *Corbin*, 117 W. Va. 241, 243.

[3] Art. 5. Sec. 4, West Virginia Code (1931), Sec. 5811 West Virginia Code Anno.

[4] *Gorman* v. *Washington Univ.*, 316 U. S. 98, 101; *Osment* v. *Pitcairn*, (No. 140, October Term 1942) 63 S. Ct. 21; *Tenner* v. *Dullea*, 314 U. S. 692.

Under the doctrine of this Court announced in *Department of Banking* v. *Pink*, No. 466 October Term 1942, 63 S. Ct. 233, it is clear that petitioners were required to apply repeatedly to the Supreme Court of Appeals of West Virginia until that court certified that the judgment was "plainly right". In *Department of Banking* v. *Pink*, supra, this Court said:

> "For the purpose of the finality which is prerequisite to a review in this Court, the test is not whether under local rules of practice the judgment is denominated final (Wick v. Superior Court, 278 U. S. 575; Cheltenham & Abbington Sewerage Company v. Pennsylvania Public Utility Comm., 317 U. S. ...., decided October 12, 1942), but rather whether the record shows that the order of the appellate court has in fact fully adjudicated rights and *that that adjudication is not subject to further review by a state court.*"

It is plain that under the West Virginia procedure all possible remedies for appeal in the appellate machinery in the Supreme Court of Appeals of West Virginia could not have been completely exhausted until the eight months limitation for appeal had expired, unless and until the appellate court entered a final decree refusing appeal by a certifying that the decree was "plainly right". Such order so certifying was not entered until March 15, 1943. On that date the decree became final. It was not ripe for certiorari until then.

Petitioners applied for extension of time for filing a petition for certiorari which was granted and time was extended to include July 15, 1943. The order extending time provided: "without at this time passing on the question of whether application for this extension is timely." (R. 96) If the three months in which to apply for extension or file for petition for certiorari begins to run on the date of the first order refusing appeal, the application for extension of time may not be timely; but if the time runs from March

15, 1943, the date that the appeal was refused because the decree was "plainly right", the application was, without doubt, timely.

Assuming that this Court will apply its own rules as to when the decree of the Circuit Court became final and hold that the time began to run from the date of the first order refusing appeal, we still insist that, under the rule applied by this Court, the application for extension of time and the filing of the petition for certiorari herein have been timely presented, under the doctrine of this Court in reference to motions for rehearing.[5] The reason is that the fact that the Supreme Court of Appeals entertained the subsequent applications renews the beginning of running of time for application for *certiorari.*

The Supreme Court of Appeals of West Virginia actually entertained three applications for appeal, all of which were presented within the eight-month period of limitation, the latest one being presented March 15, 1943. That court recognized that, for the purpose of appeal to this Court, the decree did not become final until March 15, 1943. That court granted a three months' stay from March 15, 1943, the date of its *final* decree, in which to allow petitioners to apply for a writ of certiorari. (R. 95) Therefore time for applying to this Court runs from the date of the appellate court's final order certifying that the decree of the Circuit Court was "plainly right". March 15, 1943, fixed the date when the finality of the judgment for purposes of review is established, and the three months' time for applying to this Court began to run.

The time for filing petition for certiorari expires July 15, 1943. The petition is filed within such time.

4. *Circuit Court Highest Court in which a Decision Could be Had.*

The decree of the Circuit Court was subject to discre-

[5] *City Bank of Michigan City, Ind.*, v. *Opperman*, 249 U. S. 448, 450; *Zimmerman* v. *United States*, 298 U. S. 167; *Gypsy Oil Co.* v. *Escoe*, 275 U. S. 498.

tionary review by the Supreme Court of Appeals of West Virginia. Petitioners sought to invoke this discretionary power. The appellate court refused to exercise its power of review and the decree of the trial court is the decree of the highest court of the state in which a decision could be had within the meaning of Section 237(b) of the Judicial Code. The petition for writ of certiorari therefore issues to review the decree of the Circuit Court of Calhoun County, West Virginia.[6]

5. *Time and Manner in Which Questions Raised Below.*

By motion to dismiss the injunction, the petitioners urged that the injunction denied them their rights "to distribute literature and to teach the scriptures as they were doing under both the federal and state constitutional guarantees of religious freedom, freedom of the press, and personal liberty." R. 8-9.

In their answer, petitioners alleged that "all their acts are and have been lawful and proper and protected by state and national constitutional guarantees of freedom of religion, freedom of the press, personal freedom and liberty under the First and Fourteenth Amendments of the U. S. Constitution, and Article III, Section 15, of the Constitution of the State of West Virginia. R. 12.

The trial court duly considered each of the federal questions thus presented and overruled same (R. 86-87) after hearing all the evidence. The trial court filed a written opinion giving his reasons for the decree. R. 82-86.

In the petition for appeal duly filed in the Supreme Court of Appeals of West Virginia, petitioners duly assigned error as follows: "That the court erred in denying by its decision the freedom of speech, freedom of the press, and freedom of religion guaranteed by the Constitution of

---

[6] *Virginia Railway Co.* v. *Mullins*, 271 U. S. 220 [W. Va.]; *Kanawha & M. Ry. Co.* v. *Kerse*, 239 U. S. 576, 578 [W. Va.]; *Andrew* v. *Virginian Ry. Co.*, 248 U. S. 272.

the State of West Virginia and the Constitution of the United States of America." R. 93.

All of these various contentions were overruled by the Supreme Court of Appeals of West Virginia, thus approving the unconstitutional decree of the trial court. R. 87-88, 94-95.

6. *Opinions of the Courts Below.*

The Supreme Court of Appeals of West Virginia did not render and file opinions.

The Circuit Court of Calhoun County filed an opinion which is unreported. R. 82-86.

7. *Statement of Facts.*

From October 1941 to March 1942 (R. 69) petitioners, Jehovah's witnesses, (R. 57) had been engaging regularly, once each week, on Saturdays, in the distribution of the *Watchtower* and *Consolation* magazines upon the public streets of Grantsville, West Virginia, (R. 58-59, 69-70) a town of 1052 population, located in the northwestern part of the state. The distribution of the literature thus was for the purpose of preaching the Gospel of God's Kingdom. The literature related to the tenets and beliefs advocated by Jehovah's witnesses to be found in the Bible, and were distributed in furtherance of such. (R. 65-66) At no time did petitioners experience any opposition, difficulty or trouble in the distribution of this literature until March 7, 1943. (R. 63, 69, 70) The people were always friendly to petitioners as they distributed the literature. (R. 70)

The method of distribution employed by petitioners was to stand on the sidewalk at or near the curb and offer magazines on a small contribution to the pedestrians who passed. (R. 65, 69) Each wore a canvass bag strapped over her shoulders containing extra copies of the magazines. (R. 65) Each petitioner would hold a sample copy of each magazine in her hand and say to the passers-by, "Watchtower!" and "Consolation!" R. 65.

Neither petitioners had ever experienced any altercation with anyone at any time about the subject matter of the literature, religious beliefs, the flag salute question, or anything else. (R. 73) The undisputed evidence shows that at all times mentioned herein petitioners conducted themselves quietly, properly, kindly and courteously toward the pedestrians while distributing the literature. (R. 64, 65) The undisputed evidence shows that they were not truculent, were not offensive and did not annoy anyone at any time while distributing the literature. The record shows that they did not violate any law. The respondent admitted that they did not violate any law. Petitioners never assaulted anyone at any time. R. 55, 81.

On the occasion of March 7, 1942, Bessie Mathews and Lavon Kelley were distributing literature while standing along the sidewalk curbs on Main Street. Mrs. Mathews was standing in front of her husband's department store. (R. 63) Lavon Kelley was about 100 yards down the street near Gibson's store. (R. 66) A drunken man named Charter Shafer attacked Bessie Mathews while she was distributing the literature. (R. 59) Shafer's attack was unprovoked and unexpected. (R. 60, 61) Shafer and other persons of the town had become opposed to Jehovah's witnesses because they do not salute the flag. (R. 27, 30, 32, 37, 49) Shafer felt that petitioners should not be allowed to distribute literature upon the streets and attempted to cause it to be stopped. (R. 16) He consulted the Mayor and insisted that something be done to stop the distribution of the literature. (R. 16, 33) The Mayor advised Shafer that nothing can be done, that there was no ordinance prohibiting petitioners' activity. (R. 30-33) Shafer returned to Main Street in an intoxicated condition (R. 59-60), and in a loud, angry voice, cursed and abused Bessie Mathews, "using terrible language." He accused her of being un-American and jerked the magazines out of her hand, destroyed the literature and shoved her off the sidewalk into the street.

Each time she attempted to get back on the sidewalk, he would repeatedly push her off. (R. 59) He stayed near by for some time, yelling, cursing and abusing her, then approached a man on the street and tried to bribe him by offering him $5.00 to put Bessie Mathews off the streets. (R. 59-60) Shafer then ran to the middle of the street and accosted an attorney, Louis Reed, who was crossing the street, and demanded that Reed do something about Mrs. Mathews, "in a rather loud tone of voice and while the conversation between Mr. Shaffer and myself (Reed) took place quite a large crowd collected about us. When Mr. Shaffer left me that crowd followed in behind him." (R. 24, 28) Reed advised Shafer, "I am a lawyer, I am not the law." Shafer said, "I will kill her—the son of a bitch" as he approached her again with the crowd following him. Shafer said to Mrs. Mathews, "You go back to Japan or Germany, where you belong." Bessie Mathews' son, Bill, was standing near by and saw Shafer approach his mother the second time—was standing behind her—and stepped up, and as he did so, Shafer raised his arm and struck young Mathews, who struck back and hit Shafer. Petitioner's son grappled with Shafer and was able to pin him down to the ground for some time. Later they were separated and Shafer got up and left. (R. 60) The crowd soon dispersed. Shortly thereafter Shafer returned and struck Bessie Mathews with his fist on the left jaw knocking her down and her head hit the curb. Shafer then ran across the street and some people picked her up and carried her into her husband's store. (R. 60)

At no time did Bessie Mathews provoke Shafer to attack. (R. 61, 74) No crowd had gathered prior to the time that Shafer arrived on the street near Mrs. Mathews. (R. 61) While Shafer was disturbing the peace, violating the law, making a loud noise and assaulting the petitioner Mathews, a large crowd gathered, estimated by Mrs. Mathews to be 25 (R. 59-61) and other persons estimated

the crowd ranging from 50 to 250. (R. 17, 23, 36, 39, 47, 75) The undisputed evidence shows, therefore, that petitioners did not cause any crowd to congregate at anytime. The only time that a crowd congregated while they were distributing the literature on the streets was on the occasion when Shafer caused the disturbance resulting in the congregation. The crowds dispersed quickly after Shafer had left the scene.

8. *Bill of Complaint and Findings of Court.*

Based upon the foregoing evidence, the Bill of Complaint praying for an injunction was filed. Respondent's Bill alleged that petitioners herein were Jehovah's witnesses; that Jehovah's witnesses taught that it was wrong and sinful to pay respect, honor or obeisance to the flag by saluting the flag; the distribution of the literature in the manner above described; that such distribution caused crowds to gather so as to impede and halt public traffic; that the distribution of the literature constituted "unpatriotic and treasonable acts; that the distribution of the literature constituted a public nuisance in that the activity endangered the "peace, unity and security of the town and county and the people generally", and "the ability of the people and said public to aid the government in the present emergency"; that unless enjoined, said activity would result in great harm and injury to the people of the state; that there are no criminal statutes of West Virginia and no criminal ordinances of Grantsville which would prohibit the activity; that "the plaintiff does not allege that the said defendants have been guilty of any crime against the state or town, or that said acts are crimes per se." R. 2-5.

On March 13, 1942, the trial court issued a temporary injunction without notice and without bond restraining petitioners from the distribution of said literature. R. 5-6.

The opinion of the trial court recites some of the foregoing facts and the trial court then says:

"In reviewing the record in this case an amazing situation is revealed in the testimony of the defendant Bessie Mathews. On page 17 of the testimony filed on behalf of the defendants, counsel for the plaintiff propounded to her the following question:

"Q. 17. 'You and your organization then do believe and teach that it is improper and sinful and wrongful for you and the members of your organization to give salute to the flag?'

To this she answered:

'Yes. sir.'

Then counsel propounded the further question:

"And the literature so distributed by you as alleged in the bill also teaches that doctrine, does it not?"

To this question she answered:

"Yes, because that is what the Bible teaches."

From this testimony it is not difficult to understand that the defendants have passed from the stage of believing that the flag should not be saluted but were upon the public streets distributing literature to gather support to their view. Hence, it at once appears that freedom to believe as you please is translated into action to encourage others to adopt the same notions. Again it must be submitted that there is no law in this state prohibiting any citizen from entertaining any belief he may adopt but he may not have the right to openly proclaim his beliefs in public places. In other words Jehovah's Witnesses may believe it sinful and improper to salute the flag of our country but they have no right to create disrespect for it upon the part of others. This very question has given rise to many controversies and resulted in many judicial decisions throughout the entire country not in harmony with

each other. These decisions concern largely statutes and regulations requiring salutes to the flag in public schools. Even the Supreme Court of the United States is in a doubtful position upon this matter although several cases have been presented and decided by it.

"The present case does not relate to requiring salutes, it involves a much broader question. Do the defendants have the right to go about the streets teaching orally and by distributing literature that it is sinful and wrongful to salute the American Flag? If so this same right is possessed by every person in the land. Can we say that such conduct may be protected and shielded under the cloak of religious freedom? If an act is unlawful or illegal it does not become legal because practiced by a member of a religious order. The right to believe a thing does not carry with it the right to proclaim and publish that belief without engendering the wrath of the law.

"A provision of the West Virginia Code, Chapter 61, Article 1, section 8, among other things provides: 'Any person . . . who shall publicly mutilate, deface, defile or defy, trample upon or cast contempt, either by words or acts upon any such flag . . . shall be guilty of a misdemeanor . . . ' This provision indicates the policy of the state with respect to casting contempt by words or acts upon our flag. There can be no doubt that refusal to salute the flag does not confer the privilege of persuading others to hold it in contempt.

"My conclusion of this whole matter is that the defendants have no right to use public streets to teach disrespect for the American Flag. This they have done by the admissions of one of them. Not only this but according to numerous witnesses in the cause traffic has been impeded, hindered and delayed upon a state highway because the defendants were there selling and

distributing their literature. No organization possesses this right over the objection of the state. Of course the defendants have the right to sell and distribute free unobjectionable literature, subject to reasonable regulations, but it is unreasonable to believe that the literature distributed by them does not offend against the policy of this state. As long as the literature is confined to religious subjects there is no just cause of complaint, but teaching disrespect for the flag upon public streets is not a religious duty.

"At the present time we are engaged in a great world conflict. Notice is taken of the fact that thousands of men and many women are now engaged in this unparalleled struggle to preserve certain freedoms long cherished by the American people and other civilized nations of the world. Must we submit to practices on the home front which tend to create disrespect for the government whose protection we enjoy? May it be said of us that while our men fight abroad to preserve our country we permit conduct at home calculated to weaken, if not destroy, the very liberties they seek to preserve? In an emergency such as this we cannot and we must not temporize with any conduct tending to disorganize or destroy our unity. Contempt for the American Flag is such an act—all teaching designed to foster or promote such contempt should and must be suppressed.

"An injunction will be perpetuated preventing these practices upon the part of the defendants." R. 84-86.

The conclusion of the court below concerning the facts is based entirely upon the allegations of the plaintiff-respondent and not supported in any way by any of the evidence. The conclusions are contrary to the overwhelming preponderance of the evidence. The opinion is based upon a pure fiction of fact and law.

B

Questions Presented

By reason of the foregoing, there were seasonably presented to the courts below and there are now presented to this Court for review substantial federal questions as follows:

1. Was the trial court justified in granting a final decree of injunction restraining petitioners from exercising their lawful constitutional rights of freedom of speech, freedom of press and freedom to worship ALMIGHTY GOD through distribution of the literature in question?

2. Does the final decree of the trial court, as applied to the evidence, abridge and deny petitioners of their rights of freedom of speech, freedom of press and freedom to worship ALMIGHTY GOD, contrary to the First and Fourteenth Amendments to the United States Constitution?

3. Can the right to exercise the foregoing freedoms guaranteed by the First and Fourteenth Amendments to the United States Constitution be restrained by injunction because of dissociated acts of past violence or merely because the activity may provoke violence in others who are the law violators?

4. Is the injunction, not confined to restraining acts of violence, so sweeping in its terms so as to deny to petitioners their rights guaranteed by the First and Fourteenth Amendments to the United States Constitution?

C

Reasons Relied on for Allowance of Writ

This petition for writ of certiorari should be granted in the sound discretion of this Court because there are special and important reasons therefor. The Circuit Court of Calhoun County, West Virginia, has decided a federal

question of substance in a way not in accord with and directly contrary to applicable decisions of this Court.[1]

The Circuit Court of Calhoun County, West Virginia, has so far departed from the accepted and usual course of judicial procedure as to call for an exercise of this Court's power of supervision to correct the same.

WHEREFORE, your petitioners pray that this Court issue a writ of certiorari to the Circuit Court of Calhoun County, West Virginia, directing such court to certify to this Court for review and determination on a day certain to be named, a full and complete transcript of the record and all proceedings in the case as numbered and titled on the docket of said court; and that the decree of said court be reversed and the complaint ordered dismissed and that the petitioners have such other and further relief in the premises as to this Court may seem just and proper in all the circumstances.

BESSIE MATHEWS
LAVON KELLEY
Petitioners

By HAYDEN C. COVINGTON
117 Adams Street
Brooklyn, New York
Counsel for Petitioners

---

[1] *Near* v. *Minnesota*, 283 U. S. 697, 721-722; *Milk Wagon Drivers Union, etc.* v. *Meadowmoor Dairies*, 312 U. S. 287, 293-299; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Thornhill* v. *Alabama*, 310 U. S. 88; *Carlson* v. *California*, 310 U. S. 106; *Taylor* v. *Mississippi*, No. 826, October Term 1942 [June 14, 1943]; *West Virginia State Board of Education* v. *Barnette et al.*, No. 591, October Term 1942 [June 14, 1943]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1943

No.

■

BESSIE MATHEWS AND LAVON KELLEY
Petitioners
v.
STATE OF WEST VIRGINIA, EX. REL.
LORENTZ C. HAMILTON,
PROSECUTING ATTORNEY OF CALHOUN COUNTY

■

SUPPORTING BRIEF

Specification of Errors

The petitioners assign the following errors in the record of proceedings of said cause:

The Circuit Court of Calhoun County, West Virginia, committed fundamental error in issuing the perpetual injunction restraining petitioners in the manner described because

1) The undisputed evidence showed that petitioners were exercising their constitutional rights in a lawful and proper manner and the decree denied petitioners of their rights of freedom of speech, press and worship of ALMIGHTY GOD, contrary to the First and Fourteenth Amendments to the United States Constitution.

2) The undisputed evidence showed that the petitioners were neither guilty of committing acts of violence nor causing acts of violence to be committed and the dissociated acts of past violence by third persons violating the laws of West Virginia against petitioners were not grounds for

restraining petitioners from their lawful and constitutionally protected activity.

3) The decree was not confined to restraining acts of violence but broadly included the lawful activity of petitioners contrary to the First and Fourteenth Amendments to the United States Constitution.

ARGUMENT

The undisputed evidence shows that in all the months that petitioners repeatedly distributed literature on Saturday afternoons upon the streets of Grantsville, there was only one occasion of any difficulty whatsoever. That arose and was due solely to the unlawful, unprovoked and malicious attack of Charter Shafer, who was intoxicated at the time. By his loud, boisterous, unruly, offensive and insulting conduct toward Bessie Mathews he caused a crowd to gather and disturbed the public peace. He violated the law. The lawless and law violators should be restrained by prosecution rather than enjoin the innocent ones. If this decree be sustained, then, why not enjoin the innocent bystanders? The evidence shows that no person threatened any injury or interference against petitioners personally except Shafer, a drunk.

On all other occasions, no crowd gathered about petitioners while they distributed the literature. There is no intimation or suggestion in the evidence that the traffic was at any time impeded or blocked by reason of a congregating of people about petitioners. On the occasion that the crowd gathered about petitioner Bessie Mathews when she was assaulted by Charter Shafer, the evidence shows that the crowd promptly dispersed when Shafer left.

The undisputed evidence shows that petitioners did not threaten to do violence against anyone. The respondent admits that petitioners had violated no law. There is no suggestion that petitioners were boisterous, loud, unruly

or offensive. They acted with propriety and had just as much right upon the public sidewalks as did any other person in the town of Grantsville.[8]

The evidence shows that petitioners sincerely tried to promote the welfare of the people by bringing to them the unadulterated Word of God. The message which they presented to the people of and concerning God's Kingdom, as the only hope for the world of mankind, was for the purpose of comforting all that mourn[9] in Grantsville. There is no contention that petitioners ever said or did anything against the best interests of the people of this nation. To the contrary it appears that they were sincerely trying to promote the eternal welfare, happiness, peace and security of the people. They were obeying the commands of Almighty Jehovah God, announced by Christ Jesus: "And this gospel of the kingdom shall be preached in all the world for a witness unto all nations; and then shall the end come."[10]

The activity of petitioners, Jehovah's witnesses, has been held by this Court repeatedly to receive the protection afforded by the shield of the First and Fourteenth Amendments to the United States Constitution.[11]

The principal objection to the activity of petitioners herein was that they believed that it was contrary to the law of Almighty God for *them* to salute the flag.[12]

The trial court bottomed the decree upon the assumption that such doctrines were contrary to public policy of the nation and presented a danger against the safety of the state if permitted to be made known. In *West Virginia State Board of Education* v. *Barnette et al.*, supra, this

---

[8] *Jamison* v. *Texas*, 63 S. Ct. 669 [March 8, 1943]; *Schneider* v. *State* (Town of Irvington), 308 U. S. 147.

[9] *Isaiah* 61:2.

[10] *Matthew* 24:14; *Mark* 13:10.

[11] *Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *State*, supra; *Jamison* v. *Texas*, supra; *Largent* v. *Texas*, 63 S. Ct. 667 [March 8, 1943]; *Cantwell* v. *Connecticut*, supra; *Murdock et al.* v. *Commonwealth of Pennsylvania*, 63 S. Ct. 870 [June 14, 1943]; *Jones* v. *Opelika*, 63 S. Ct. 890 [June 14, 1943]; *Martin* v. *Struthers*, 63 S. Ct. 862 [June 14, 1943]; *Taylor* v. *Mississippi*, supra.

[12] *Exodus* 20:3-5.

Court held that it was beyond the power of the state to enact law to compel citizens to salute the flag. There the Court said: "To sustain the compulsory flag salute we are required to say that a Bill of Rights which guards the individual's right to speak his own mind, left it open to public authorities to compel him to utter what is not in his mind."

The issues presented in the case at bar are specifically disposed of by this Court in favor of petitioners, Jehovah's witnesses, in the case of *Taylor* v. *Mississippi*, supra, where the Court said:

> "The statute here in question seeks to punish as a criminal one who teaches resistance to governmental compulsion to salute. If the Fourteenth Amendment bans enforcement of the school regulation, *a fortiori* it prohibits the imposition of punishment for urging and advising that, on religious grounds, citizens refrain from saluting the flag. If the state cannot constrain one to violate his conscientious religious conviction by saluting the national emblem, then certainly it cannot punish him for imparting his views on the subject to his fellows and exhorting them to accept those views.
>
> "Inasmuch as Betty Benoit was charged only with disseminating literature reasonably tending to create an attitude of stubborn refusal to salute, honor, or respect the national and state flag and government, her conviction denies her the liberty guaranteed by the Fourteenth Amendment. Her conviction and the convictions of Taylor and Cummings, for advocating and teaching refusal to salute the flag, cannot be sustained."

Respondent argues that the doctrines believed by petitioners and the contents of the literature related to a subject matter that was provocative and was calculated to cause others to threaten a breach of the peace and to do

violence against petitioners. This argument was specifically disposed of by this Court in *Murdock et al.* v. *Pennsylvania,* supra, where the Court said:

> "Considerable emphasis is placed on the kind of literature which petitioners were distributing—its provocative, abusive and ill-mannered character and the assault which it makes on our established churches and the cherished faiths of many of us. See *Douglas* v. *City of Jeannette,* concurring opinion, decided this day. But those considerations are no justification for the license tax which the ordinance imposes. Plainly a community may not suppress, or the state tax, the dissemination of views because they are unpopular, annoying or distasteful. If that device were ever sanctioned, there would have been forged a ready instrument for the suppression of the faith which any minority cherishes but which does not happen to be in favor. That would be a complete repudiation of the philosophy of the Bill of Rights."

In determining this issue, this Court cannot overlook the controlling authority of *Cantwell* v. *Connecticut,* supra, unanimously decided by this Court. It was there held that the playing of a phonograph record which violently attacked the Roman Catholic Hierarchy, the governing body of the faith to which the two listeners belonged, was not sufficient reason for abridging the rights of the Cantwells secured by the United States Constitution. In commenting on the conduct of the Cantwells, it is noticed that this Court finds facts identical with the facts in this case. The Court said:

> "We find in the instant case no assault or threatening of bodily harm, no truculent bearing, no intentional discourtesy, no personal abuse. On the contrary, we find only an effort to persuade a willing listener to buy a book or to contribute money in the interest of what

> Cantwell, however misguided others may think him, conceived to be true religion."[13]

In the case at bar the undisputed evidence shows also that there was no truculent conduct, no actual threats of violence of any other improper conduct on the part of Jehovah's witnesses. In this connection we call the Court's attention to the case of *Dearborn Publishing Co.* v. *Fitzgerald,* 271 F. 479, where the court overruled the same argument that the trial court relied upon in this case. The Circuit Court of Appeals sustained a prayer for an injunction in favor of the Dearborn Publishing Company, restraining the mayor of Cleveland, Ohio, from arresting the street distributors of the *Dearborn Independent,* which contained articles of a vicious and scurrilous nature against the Jewish race. The defendants in that case arrested and threatened the arrest of the distributors because there had been mob violence and threatened mob violence between those of the Jewish race, their sympathizers, and the distributors of the literature. The defendants in that case resorted to an ordinance that prohibited the distribution of literature that might tend to or cause a breach of the peace. The United States District Court granted the injunction. As is contended by respondent here, the defendants in that case contended that it was necessary to take action against the distributors to prevent disturbance and to preserve "law and order". However, such contention of public convenience was held not to justify the suppression of the right of freedom of the press, the court saying:

> "If it be assumed that the article might tend to excite others to breaches of the peace the reply is plain. It is the duty of all officials charged with preserving order and peace to suppress firmly and promptly all persons guilty of disturbing it, and not forbid innocent persons to exercise their lawful and equal

[13] See also *People* v. *Downer,* 6 N. Y. S. 2d 566.

rights. . . . If defendants' actions were sustained, the constitutional liberty of every citizen freely to speak, write and publish his sentiments on all subjects, being responsible only for abuse of that right, would be placed at the mercy of every public official who for the moment was clothed with authority to preserve the public peace and the right to a free press thus destroyed."

The sweeping scope of the injunctive decree of the court below specifically violates the federal constitution. It is within the condemnation of a similar injunction announced by this Court in *Near* v. *Minnesota,* supra, where the Court said:

"Equally unavailing is the insistence that the statute is designed to prevent the circulation of scandal which tends to disturb the public peace and to provoke assaults and commission of crime. Charges of reprehensible conduct, and in particular of official malfeasance, unquestionably creates a public scandal, but the theory of the constitutional guaranty is that even a more serious public evil would be caused by authority to prevent publication. 'To prohibit the intent to excite those unfavorable sentiments against those who administer the Government, is equivalent to a prohibition of the actual excitement of them; and to prohibit the actual excitement of them is equivalent to a prohibition of discussions having that tendency and effect; which, again, is equivalent to a protection of those who administer the Government, if they should at any time deserve the contempt or hatred of the people, against being exposed to it by free animadversions on their character and conduct.'[14] There is nothing new in the fact that charges of reprehensible conduct may create

[14] Report on the Virginia Resolutions, Madison's Works, Vol IV. Pages 543, 549.

> resentment and the disposition to resort to violent means of redress, but this well understood tendency did not alter the determination to protect the press against censorship and restraint upon publication. As was said in New Yorkers Staats-Zeitung v. Nolan, 89 N. J. Eq. 387, 388, 105 Atl. 72: 'If the township may prevent the circulation of a newspaper for no reason other than that some of its inhabitants may violently disagree with it, and resent its circulation by resorting to physical violence, there is no limit to what may be prohibited.' The danger of violent reactions becomes greater with effective organization of defiant groups resenting exposure, and if this consideration warranted legislative interference with the initial freedom of publication, the constitutional protection would be reduced to a new form of words."

The conclusions reached by this Court in *Milk Wagon Drivers Union, etc.* v. *Meadowmoor Dairies,* supra, cannot be drawn here. On the contrary the facts in the case at bar come clearly within the exception announced by Justice Frankfurter in that case, to-wit:

> " . . . And so the right of free speech cannot be denied by drawing from a trivial rough incident or a moment of animal exuberance the conclusion that otherwise peaceful picketing has the taint of force. . . .
>
> " . . . Right to free speech in the future cannot be forfeited because of dissociated acts of past violence. Nor may a state enjoin peaceful picketing merely because it may provoke violence in others. . . .
>
> " . . . Here again, the state courts have not the last say. They must act in subordination to the duty of this Court to enforce constitutional liberties even when denied through spurious findings of fact in a state court."

If the doctrine announced by the Circuit Court of Calhoun County, below, be sustained, then there is no end to which the people would be swept away from their liberties guaranteed by the Constitution. If the injunctive decree can be sustained because it prohibits the distribution of literature on account of the beliefs of the petitioners then *a fortiori* a similar injunction can be granted which restrains the petitioners from walking down the street in the presence of people who know them to be Jehovah's witnesses. A similar decree could be entered enjoining a person from wearing an orange-colored hat on St. Patrick's Day in Boston. The theory sustaining the injunction is that it is to prevent violence. This in effect inters law-abiding citizens and imprisoning them in order to permit the law violators to run loose upon the streets. If the principle of the decision below be extended, then a newsboy could be enjoined from distributing daily papers which carried news which was odious, bad, unpopular or distasteful to certain excitable and unpredictable persons.

We submit that petitioners should have the right to protection from a drunken thug and village tyrant who attempts to sweep the streets of all he dislikes. The State of West Virginia did not afford petitioners this protection. It answered with an injunction, enjoining not the law violators, the one that breached the peace, but rather the petitioners were enjoined from the exercise of their freedoms secured by the fundamental law of the land, while the criminal is left free and unmolested. The decree cannot be sustained.

CONCLUSION

For the reasons above presented, there is presented here a case calling for the exercise by this Court of its supervisory powers under 237(b) of the Judicial Code and Rule 38, paragraph 5 of this Court. To that end the petition for writ of certiorari should be granted so as to correct the

errors complained of and the decree rendered by the Circuit Court of Calhoun County, West Virginia, against these petitioners.

Respectfully submitted,

HAYDEN C. COVINGTON
Counsel for Petitioners

No. 155. MATHEWS ET AL. *v.* WEST VIRGINIA EX REL. HAMILTON, PROSECUTING ATTORNEY. On petition for writ of certiorari to the Circuit Court of Calhoun County, West Virginia. October 18, 1943. *Per Curiam:* The petition for writ of certiorari is granted. Subsequent to the decision of the Supreme Court of Appeals of West Virginia, denying leave to appeal on the ground that the decree of

the Circuit Court of Calhoun County was "plainly right," this Court in *Taylor* v. *Mississippi*, 319 U. S. 583, *Benoit* v. *Mississippi*, 319 U. S. 583, *Cummings* v. *Mississippi*, 319 U. S. 583, and *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, considered questions having a bearing on the issues in the present case. Accordingly we vacate the judgment and remand the cause to the Circuit Court of Calhoun County for further consideration in the light of our decisions in those cases. *New York ex rel. Whitman* v. *Wilson*, 318 U. S. 688, 690–91, and cases cited. *Mr. Hayden C. Covington* for petitioners.